REGD. GOA - 5

Panaji, 20th April, 2000 (Chaitra 31, 1922) SERIES II No. 3

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Order

No. 28/22/95-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

J. M. de Almeida, Jt. Secretary (Labour).

Panaji, 10th January, 1996.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

REF. No. IT/50/95

Workmen
Rep. By Goa Kamgar Sena
Carvalho Bldg., Near Joao
Menezes Pharmacy
Mapusa, Bardez Goa ... Workmen

V/s

M/s Thivim Pharmaceuticals,
Thivim Industrial Estate
Karaswada, Mapusa,
Bardez Goa ... Employer/Party II

Panaji, Dated: 14-12-1995

Party I- Absent
Party II- Represented by partner Shri Dilip Patkar

AWARD

In exercise of the powers confered by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, (Central Act 14 of 1947) the Government of Goa, by order dated 8-9-1995 bearing No. 28/22/95-LAB, referred the following dispute for adjudication by this Tribunal.

"Whether the following demands served by the Goa Kamgar Sena vide their letter dated 18-12-1995 on the management of M/s Thivim Pharmaceuticals, Thivim Industrial Estate, Karaswada, Mapusa Goa, are legal and justified?"

DEMANDS

1. *WAGE SCALES:* All the workers shall be given adhoc rise of Rs.700/- per month in their existing salary.

2. *LEAVE FACILITIES:*

   (a) Privilege Leave: The management should grant 10 days P.L. to the employees who have put in 240 days of attendance during the year.

   (b) Casual Leave: All the workers should be given 10 days Casual Leave with full wages in a calendar year. The unavailed casual leave should be allowed to be encashed at the end of the year.

   (c) Sick Leave: All the workers shall be given 10 days sick leave with a right to accumulate up to 30 days.

   (d) All the workers shall be granted 7 days paid holidays in a year.

3. *E.S.I.C. SCHEME:* Those workers who are not covered under the E.S.I.C.scheme, they should be immediately covered by the same.

4. *PROVIDENT FUND:* The Company should provide last three years P. F. Slips and should immediately start Provident Fund Scheme.

5. *HOUSE RENT ALLOWANCE:* All the workers shall be paid house rent allowance @ 10% of the total salary.

6. *LEAVE TRAVELLING ALLOWANCE:* All the workers shall be paid Rs. 500/- per annum as a leave travelling allowance with a right to accumulate the same for the period of 2 years. The L.T.A. should be paid prior to proceeding on leave.

7. *EDUCATION ALLOWANCE:* All the employees shall be paid Rs. 100/- per month towards education allowance.

8. *ATTENDANCE ALLOWANCE:* Those workers who put up 25 years or 26 days actual work during the month (inclusive of one sick or casual leave), they should be paid extra salary of one day.

9. *MEDICAL ALLOWANCE:* Those workers who are drawing a salary of more than Rs. 1600/- per month are not covered under E.S.I.S. Scheme, they should be paid Rs. 500/- per annum towards medical allowance.

10. *CANTEEN ALLOWANCE:* The company should grant canteen subsidy of Rs. 5/- per day to each worker.

11. *CONVEYANCE ALLOWANCE:* All the workers should be paid Rs. 8/- per day as a conveyance allowance.

12. *GRATUITY:* The company should pay gratuity equivalent to 30 days pay, per year of service to each worker.

13. *UNIFORM:* The company shall provide two pairs of uniforms to all the workers/employees. Further the company also should pay Rs. 50/- per month as a uniform washing allowance or the management should make alternate arrangement of washing the uniforms

14. *PERMANENCY:* Those workers who have put up 240 days of service, the management should confirm their service and confirmation letter should be issued to these workers.

15. All the existing facilities which are not covered under the above demands should be continued without any change whatsoever.

The retrospective effect should be considered with effect from 1st August, 1994.

2. What revision the workmen are entitled to?"

(2) On receipt of the reference, a case was registered under No. IT/50/95 and registered A/D notice was issued to the parties. The Party II was duly served and was represented by its partner Shri Dilip Patkar. However, the notice in respect of the Party I was returned unserved with postal endorsement "Intimated" Unclaimed, return to sender".

3. Shri Dilip Patkar, the partner of the Party II, submitted that the dispute was settled between the parties much before the reference was made by the Government. He filed the copy of the memorandum of settlement dated 5-6-1995 duly signed by the parties before the Dy. Labour Commissioner and concilliation Officer. I have gone through the terms of the settlement. Clause 3 of the said memorandum of settlement states that the Party I and the workmen agree that their all disputes including charter of demands stand conclusively settled and they have no claim of whatsoever nature against the employer, Party II. The present dispute is as regards the charter of demands raised by the Party I and since this dispute is conclusively settled and the Party I has no claim of whatsoever nature against the Party II as per the memorandum of settlement dated 5-6-1995, the dispute does not exist and consequently, the reference does not survive. In the circumstances, I pass the following Order.

ORDER

It is hereby held that the reference does not survive since the dispute does not exist in view of the settlement of the dispute between the Party I, Goa Kamgar Sena and the Party II M/s Thivim Pharmaceuticals, vide memorandum of settlement dated 5-6-1995.

No order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/73/90-LAB

The following Award given by the Industrial Tribunal, Goa Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

J. M. de Almeida, Jt. Secretary (Labour).

Panaji, 2nd February, 1996.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

IT/2/91

Shri Agnelo Pires
Rep. by the Secretary
Goa Trade & Commercial
Workers Union
Velho Building, Panaji - Goa — Workman/Party I

V/s

The Director
Bal Bhavan, Lyceum Complex
Altinho, Panaji Goa — Employer/Party II

Party I - Represented by Adv. Raju Mangueshkar.
Party II - Represented by Adv. G. U. Bhobe.

Panaji, Dated: 20-12-95.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 4-1-1991 bearing No. 28/73/90-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the activities of Bal Bhavan at Altinho, Panaji come within the definition of 'industry' and whether Bal Bhavan is an 'industry' as per section 2(j) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?

If so, whether the action of the management of Bal Bhavan Altinho, Panaji in terminating the services of Shri Agnelo Pires, Librarian w.e.f. 1-2-1989 is legal and justified.

If the answer to (2) above is in the negative, then to what relief the workman Shri Agnelo Pires is entitled?"

2. On receipt of the reference, case was registered under No. IT/2/91 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The party I (For short "Workman") filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was appointed as a Librarian by Party II (For Short "Employer") w.e.f. 23-6-87 on monthly salary of Rs. 1370/- That however, he was paid in fact only Rs. 600/- and he was told that he would be paid Rs. 1370/- as salary after the 1st Board Meeting had taken place. That, since inspite of the assurance given, nothing was done by the employer, the workman made the request in writing by letter dated 1-6-88. However, no action was taken by the employer on the said letter of the workman. The workman contended that the post of Librarian is a permanent post and as per the guidelines rules and regulations governing the employer, having a permanent post of Librarian is mandatory. That, thereafter, the workman received a letter dated 9-1-89 from the Party II asking him to hand over the charge of library books and other records to one Shri Shashikant Punaji on or before 25-1-89 and also his services were terminated w.e.f. 1-2-89 without any reasons. That the workman raised an industrial dispute before the Labour Commissioner and since there was no conciliation, failure report was submitted to the Government. The workman contended that the termination of his services by the Party II is illegal and unjustified and hence he claimed reinstatement with full back wages.

The employer filed the written statement which is at Exb. 5. The employer stated that the dispute raised is not an industrial dispute as the workman is not a "workman" as defined under Sec. 2(s) of the I. D. Act, 1947 and also the employer was not an industry. The employer further stated that the Union had no authority to raise the dispute on behalf of the workman as he was not the member of the said union nor it was shown that the union has authority to file the claim statement on behalf of the workman. The employer denied that the workman was appointed on a salary of Rs. 1370/- p.m. The employer stated that the Board of the Party II decided to abolish the said post, as the post of Librarian was not necessary and consequently the services of the workman were discontinued from 1-2-1989. The employer denied that it was mandatory on the employer to have a post of Librarian in Bal Bhavan. The employer further denied that its action in terminating the services of the workman w.e.f. 1-2-89 was illegal or unjustified or that the workman was entitled to any relief as claimed by him. The workman, thereafter, filed rejoinder which is at Exb. 6, and on the pleadings of the parties issues were framed at Exb. 7.

4. After the issues were framed, the case was fixed for the evidence of the workman. On 28-11-95 when the case was fixed for further cross examination of the workman, Adv. Shri Raju Mangueshkar representing the workman and Adv. G. U. Bhobe, representing the employer appeared and submitted that the dispute between the parties was settled and filed the consent terms dated 28-11-95 at Exb. 14. The parties prayed that the Award be passed in terms of the consent terms dated 28-11-95 Exb. 14. I have gone through the consent terms and I am satisfied that the said terms are certainly in the interest of the workman. I. therefore, accept the submission made by the parties and pass the consent Award made by the parties and pass the consent Award in terms of the Consent terms dated 28-11-95 Exb. 14.

ORDER

1. The parties above named have between themselves settled and compromised the dispute/subject matter of the above reference.

2. The Employer/Party II have paid to the Workman/Party I a sum of Rs. 12,000/- (Rupees Twelve thousand only) vide cheque No. 563255 dated 8-11-95 drawn on State Bank of India, Panaji in full and final settlement of the above reference and dispute which the workman/party I agrees to have received in full and final settlement. The workman/party I declares that he has no further claim of whatsoever nature against the Employer/Party II.

3. The workman/Party I accept termination notice dated 9-1-89 as valid upon receipt of the above said sum of Rs. 12,000/- in full and final settlement.

4. The workman/party I has no further claim against the employer/party II.

No order as to cost. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/48/86-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

J. M. de Almeida, Jt. Secretary (Labour).

Panaji, 2nd February, 1996.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/1/90

Shri Shanu Mengo Cuncolienkar
Vastiwada, H. No. 172, Cundaim
PO. Cundaim Goa. — Workman/Party I

V/s

M/s Hotel Cafe Real
Panaji Goa ... Employer/Party II

Party I represented by Adv. Shri Narvekar
Party II represented by Adv. Shri E. Dias

Panaji, Dated: 3-1-96.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, (Central Act 14 of 1947) the Government of Goa by order dated 11th January, 1990 bearing No. 28/48/86-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the management of M/s Hotel Cafe Real, Panaji, in terminating the services of their workman Shri Shanu Mengo Cuncolienkar or he had voluntarily abandoned the services w.e.f. 1-3-78?"

2. On receipt of the reference, a case was registered under No. IT/1/90 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The party I (For short "Workman") filed the statement of claim which is at Exb. 2. The facts of the case in brief as pleaded by the workman are that he was employed with the Party II (For short "Employer") as a sweet maker in its hotel w.e.f. 5-1-1972 on salary of Rs. 150/- p.m. That he worked regularly and carried out his work to the satisfaction of the employer. That however, the employer without giving any reason and without giving any notice terminated his services w.e.f. 1-3-1978. The workman, thereafter by letter dated 28-4-1979 requested the employer to take him back in service but the employer refused to do the same. That, thereafter, the workman raised an industrial dispute which was referred to the Tribunal by the Government for adjudication. That the tribunal passed the Award dated 1-7-1980 directing the employer to reinstate the workman with full back wages from 1-3-1978. The employer challenged the said Award in the High Court of Judicature at Bombay, Panaji Bench and by Judgment dated 21-6-1984, the High Court set aside the Award dated 1-7-1978 holding that the Government was free to make a fresh reference.That accordingly Government susequently made the above reference. That workman claimed that the termination of his services by the employer is illegal.

3. The employer filed the written statement which is at Exb. 3. The employer stated that the workman was employed since the year 1973 and he was remaining absent unauthorisedly from time to time. The employer stated the workman abandoned his services w.e.f. 1-3-78. The employer denied that the services of the workman were terminated or he was removed from service at any time. The employer contended that the workman was given the offer of rejoining the duty with the benefit of continuity in service, but the workman did not show any willingness to join the duties. The employer denied that the services of the workman were terminated w.e.f. 1-3-78.

The employer stated that the workman voluntarily abandoned the services w.e.f. 1-3-78 and hence he was not entitled to any relief. Thereafter, the workman filed the Rejoinder which is at Exb. 4, controverting the pleadings of the employer.

4. On the pleadings of the parties, issues were framed at Exb. 5, and both the parties led evidence in their defence. However, before the arguments could be heard on the merits of the case, the workman and the employer alongwith their advocates appeared on 22-12-95 and submitted that the dispute between them was duly settled and filed the terms of settlement dated 22-12-95 at Exb. 15. The parties prayed that the Award be passed in terms of the settlement. I have gone through the terms of the settlement and I am satisfied that they are certainly in the interest of the workman. I, therefore, accept the submissions made by both the parties and pass the Consent Award in terms of the settlement dated 22-12-95 Exb. 15.

ORDER

1. In settlement of all the claims and disputes of whatsoever nature which was subject of the above dispute, the Party of the 2nd part has agreed to pay an amount of Rs. 16,500/- (Rupees sixteen thousand five hundred only) towards full and final settlement of all claims and dispute which are subject matter and/or any other claims concerning and/or in connection with the subject matter.

2. The Party of the 1st Part hereby confirms the above agreement and settles all the disputes and claims fully and finally on receipt of the above compensation in the sum of Rs. 16,500/- (Rupees sixteen thousand five hundred only)

No order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/39/93-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

J. M. de Almeida, Jt. Secretary (Labour).

Panaji, 3rd April, 1996.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit j. Agni, Hon'ble Presiding Officer)

REF. No. IT/15/94

Workmen
Rep. by the General Secretary
Goa Mine Workers Union
P. O. Box No. 90
Vasco da Gama .... Workmen/Party I

V/s

M/s M. S. Narvekar
P.O. Box 123, Laljee Devraj Bldg.,
Panaji Goa. .... Employer/Party II

Workmen/Party I represented by Adv. P. J. Kamat
Employer/Party II represented by Adv. G.K.Sardessai

Panaji, Dated: 8-3-96

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of section 10 of the Industrial Disputes Act, 1947, (Central Act 14 of 1947), the Government of Goa by order dated 25-8-93 bearing No. 28/39/93-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the following demands raised by Goa Mine Workers Union before the management of M/s N.S. Narvekar are justified?

If not, to what relief the workmen are entitled?"

The reference contained as many as 11(eleven) demands raised by the Union namely (i) Wage Revision (2) House Rent Allowance (3) Daily Wages (4) Uniform and Washing Allowance (5) Confirmation (6) Canteen Subsidy (7) Travelling Allowance (8) City Allowance (9) Leave (10) Medical Facilities and (11) Rainwear and Safty shoes.

2. On receipt of the reference, a case was registered under No.IT/15/94 and registered A/D notice was issued to the parties. The Party II (For short "Employer") was duly served and was represented by Adv. Shri G. K. Sardessai. The Party I (For Short "Union") though was duly served did not appear. However, an application dated 22-9-94 signed by some workmen was received by this Tribunal wherein it was stated that they had resigned from the Union by letter dated 29-8-94 and that they were withdrawing unconditionally all their claims/demand made against the employer. On receipt of the said application, the employer was directed to file the list of the employees employed by it. Accordingly, the employer filed the list on 21-11-94 giving the details as regards the names of the workmen who were retrenched, who retired and who were presently in employment. The retrenched workmen were the same who had filed the application dated 29-8-94 stating that they had resigned from the Union and that they had withdrawn their demands. Therefore, a fresh notice was issued to the six workmen (For short "Workmen") who were presently in employment with the employer. The workmen were duly served with the notice and were represented by Adv. Shri P. J. Kamat.

3. The workmen filed their statement of claim at Exb.7. The workmen contended that the employer is engaged in the business of mining, having Head Office at Margao and Mines at different places in Goa as well as in Karnataka. The workmen contended that the employer in the year 1989 employed in all 48 workmen out of which 30 workmen were employed at Kalay Mines and the remaining 18 were employeed at different places including the Head Office and the branch offices. That, by the end of the year 1994, out of the 18 workmen who were working at places other than at Kalay Mines, services of 12 workmen came to an end, and thus only 6 workmen remained in the employment of the employer. The workmen contended that from 1-1-89, the employer revised the wages and other benefits of the 30 workmen who were employed at Kalay Mines but did not do so in respect of the other 18 workmen including the workmen, thereby creating discrimination. That the Union therefore raised the demand against the employer for revision in the wages and other benefits and since the employer did not agree to the same, industrial dispute was raised before the Dy. Labour Commissioner, at Margao and after the conciliation proceedings failed, the dispute was referred to this Tribunal. The workmen contended that the cost of living in Goa has been increasing every day and their wages are not revised to meet the increased cost. The workmen further contended that the action of the employer in revising the wages and benefits of other 30 workmen and not revising the wages & other benefits of the workmen was discriminatory. The workmen further contended that the employer was making huge profits, and therefore, they are entitled to the revision in wages and also to the other demands raised by them which according to the workmen are just and proper.

4. The employer filed the written statement which is at Exb.8. The employer stated that the claim statement filed by the workmen is liable to be rejected as they individually did not have any status to appear in the matter independent of the Union. The employer stated that the Kalay Mines are being operated under an agreement with M/s Chowgule & Co. Ltd., and under the said agreement all the employees working on the said mines are required to be reimbursed by M/s Chowgule & Co. Ltd. The employer further stated that the mines other than Kalay mines are independent establishments by themselves and are improductive and hence all the mines cannot be clubbed together for the purpose of service conditions and other benefits. The employer denied that the workmen were entitled to demand wage revision.The employer stated that the workmen employed in the Head office at Margao or at offices at Panaji or at the mines from different class in itself and as they do not work at mines, they cannot be classified as mining workers, and consequently, they ought to be treated differently for the purpose of determination of service conditions and benefits. The employer denied that upto the year 1986, the wages and other benefits of all the 48 workmen were the same and similar or that they were revised periodically. The employer also denied that the workmen were given at any time the benefits such as N. R. A., washing alowance, uniforms, canteen subsidy etc. The employer contended that the present wage structure of the workmen is fair and proper and does not require any revision. The employer denied that it made any huge profits as contended by the workmen and since the demands made by the workmen were not justified, they should be rejected.

5. Thereafter, the workmen filed Rejoinder which is at Exb. 9 and subseqüently on the pleadings of the parties issues were framed at Exb. 10. After the issues were framed, the case was fixed for filing list of documents and witnesses by both the parties.

6. On 6-2-96, when the case was fixed for hearing, Adv. P. J. Kamat, representing the workmen filed an application Exb. 12 signed by the workmen, and prayed that no dispute award be passed since the workmen had decided not to press for the demand made by them.

I have gone through the application dated 6-2-96 Exb. 12 filed by the workmen. In the said application, the workmen have stated that they have no dispute whatsoever with the employer and all their claims under the charter of demands dated 29-9-89 with reference to which the above reference was made stands fully and finelly withdrawn. Since the workmen themselves have stated that thay have no dispute whatsoever with the employer and that their demands stands fully and finally withdrawn, the dispute does not exist and consequently, the reference does not survive. In the circumstances, I pass the following order:

ORDER

It is hereby held that the reference does not survive since the dispute does not exist in view of the withdrawal of the demands fully and finally by the workmen of M/s. N. S. Narvekar Laljee Dewraj Building, Panaji Goa.

No order as to costs. Inform the Government acordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/8/95-LAB

The following Award given by the Industrial Tribunal, Goa Daman and Diu is hereby published as required under the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

J. M. de Almeida, Jt. Secretary (Labour)

Panaji, 3rd May, 1996.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/22/95

Shri Domnic Gonsalves &
10 Others,
Rep. by Goa Trade &
Commericial Workers' Union,
Panaji-Goa —Workmen/Party I

V/s

M/s. Soft Food,
Gounloy, Nuvem, Goa. —Employer/Party II

Party I Represented by Adv. Raju Mangueshkar.
Party II Represened by Adv. M. S. Bandodkar.

Panaji, Dated: 8-4-96

AWARD

In exercise of the powers conferred by clause (d) of Sub-Sec. (1) of Sec. 10 of the Industrial Disputes Act,1947 (Central Act, 14 of 1947) the Government of Goa by order dated 10-4-95 bearing No. 28/8/95-LAB referred the following dispute for adjudication by this Tribunal.

(1) Whether the action of the management of M/s. Soft Foods, Nuvem, in retrenching S/Shri Domnic Gonsalves and Bernardo Miranda both drivers w.e.f. 16.8.94 is legal and justified?

(2) Whether the action of the manageement of M/s. Soft Foods, Nuvem, in terminating the services of the following 9 workmen, w.e.f. 22.8.94 is legal and justified?

(1) Jose G. Dourado (2) Joe Braganza
(3) Ramesh Verekar (4) Ulhas Kerkar
(5) Roque Figueredo (6) Peter Pongo
(7) Acsucena D'Souza (8) Manelina Colaco
(9) Beny Fernandes

(3) If the answers to (1) and (2) above are negative, to what relief the above 11 women are entitled?

2. On receipt of the reference a case was registered under No. IT/22/95 and registered A/D notice was issued to the parties. In pursuance to the said notice, the Party I appeared and they were represented by Adv. Raju Mangueshkar. The Party II though duly served with the notice remained absent. The Party I (for short, 'Union') filed a statement of claim at Exb. 3. The proceedings against the Party II were proceeded ex-parte on 26-9-95 as inspte of the opportunities given the Party II (for short, 'Employer') failed to attend the hearing and filed the written statement. On 16-11-95 when the case was fixed for recording ex-parte evidence of the Union, Adv. Bandodkar appeared on behalf of the Employer and filed an application at Exb. 5 for setting aside the ex-parte order dated 26-9-95. Since the Union not object to the application, the ex-parte order dated 26-9-95 was set aside and the employer was directed to file the written statement. However, on 29-2-96 when case was for fixed hearing the parties submitted that the dispute between them was duly settled and they filed the terms of the settlement at Exb. 6 along with application praying that the award be passed in terms of the settlement dated 29-2-96. I have gone through the terms of the settlement which are duly signed by all the workmen involved in the reference and also by the employer and I am satisfied that the settlement is certainly in the interest of the workmen. I, therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement dated 29-2-96. Exb. 6.

ORDER

1. It is agreed between the parties that the following workmen concerned in the reference shall be deemed to be voluntarily retired and shall be paid an ammount put against their names in full and final settlement of their all claims arising out of their employment and arising out of the reference as per the details below:

1. Miss Beny Fernandes Rs. 923/-
(Rupees Nine Hundred Twenty Three Only)
2. Mr. Peter Pongo Rs. 923/-
(Rupees Nine Hundred Twenty Three Only)

3. Miss Manelina Colaco Rs. 923/-
(Rupees Nine Hundred Twenty Three Only)

4. Miss Assucena D'Souza Rs. 5506.50
(Rupees Five Thousand Five Hundred Six and Paisa Fifty Only)

5. Mr. Ulhas Kerkar Rs. 14959/-
(Rupees Fourteen Thousand Nine Hundred Fifty Nine only)

6. Mr. Ramesh Vernekar Rs. 18859/-
(Rupees Eighteen Thousand Eight Hundred Fifty Nine Only)

7. Mr. Jose Gaspar Dourado Rs. 29225/-
(Rupees Twenty Nine Thousand Two Hundred Twenty Five Only)

8. Mr. Joe Braganza Rs. 40412/-
(Rupees Forty Thousand Four Hundred and Twelve Only)

9. Mr. Bernardo Miranda Rs. 8525/-
(Rupees Eight Thousand Five Hundredand Twenty Five Only)

10. Mr. Roque Figureido Rs. 11515/-
(Rupees Eleven Thousand Five Hundred Fifteen Only)

2. In so far as Domnic Gonsalves is concerned, since he has already accepted legal dues of Rs. 3684/- in full and final settlement of all claims arising out of employment nothing more is payable to him.

3. In so far as Mr. Bernardo Miranda is concerned he shall be paid the amount mentioned against his name subject to the he returning the Demand Draft/Postal Order issued to him earlier i.e. Rs. 4548/- and if at all if he have already encashed the said Draft, he would be paid amount mentioned against his name minus the respective Draft amount.

4. It is agreed by the above workman that the amount mentioned in clause 1 includes Notice Pay, Compensation, Gratuity, Unpaid Salary, Leave Salary and Ex-Gratia amount.

5. It is agreed by the workmen that they shall accept the amount mentioned in clause 1 in full and final settlement of all their claims arising out of their employment and arising out of the reference and they shall not further claim any money benefits including reinstatement of re-employment and that the entire dispute/differences is conclusively settled.

6. It is agreed between the parties that this settlement or copy of the settlement shall be placed before the Industrial Tribunal, Panaji-Goa, wherein the the reference IT/No. 22/95 is pending and the Tribunal would be asked to pass an award in terms of the settlement herein above.

7. It is agreed between the parties that all the workmen shall be given service certificate.

8. It is agreed between the parties that any Criminal or Civil cases that might have been filed against the workers before any authority the same shall be withdrawn.

9. It is agreed by the workmen that they shall not interfere in any way, in the affairs or property thereof of the firm henceforth.

There shall be no order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal

Order

No. 28/11/95-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

J. M. de Almeida, Jt. Secretary (Labour).

Panaji, 19th January, 1996.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/21/95

Smt. Bharati S. Gadekar,
Vasco, Goa. ...Workman/Party I

V/s

M/s. Sethia Brothers,
Sultan Building,
Vasco, Goa. ... Employer/Party II

Party I represented by Adv. Shri P. B. Devari.
Party II represented by Adv. A. Nigalye.

Panaji, Dated: 14-12-95

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-Sec. (1) of Sec. 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 2-5-95 bearing No. 28-11-95-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Sethia Brothers, Vasco, Goa, in terminating the services of Smt. Bharati Gadekar, Assistant Sales Girl, with effect from 31-3-1993, is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/21/95 and registered A/D notice was issued to the parties In pursuance to the said notice, the parties put in their appearance. The Party I (for short, 'workman') filed the statement of claim at Exb. 4. In the statement of claim the workman stated that she was working with the Party II (for short, 'employer') since 6-1-86 as Assistant Sales Girl. The workman contended that the employer orally terminated her services w. e. f. 1-4-93 and no legal dues were paid to her. The workman further contended that the employer terminated her services without holding any enquiry and in violation of the provisions of Sec. 25-FFF of the I. D. Act, 1947. The contention of the workman is that the termination of her services by the employer is illegal, improper and unjustified and hence she is liable to be reinstated with full back wages.

3. On 16-11-95 when the case was fixed for filing of the written statement by the employer, the parties submitted that the dispute between them was being settled and accordingly at the request of the parties the case was adjourned to 1-12-95 for filing the terms of settlement. On 1-12-95 the parties apeared along with their respective Advocates and filed the terms of settlement duly signed by the parties at Exb. 5. The parties prayed that the award be passed in terms of the settlement dated 1-12-95 Exb. 5. I have gone through the terms of the settlement and I am satisfied that they are certainly in the interest of the workman. I, therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement dated 1-12-95 Exb. 5.'

ORDER

1. It is agreed by and between the parties that the Party II M/s. Sethia Brothers shall pay a sum of Rs. 6,500 (Rupees Six Thousand Five Hundred Only) to Miss Bharati Gadekar, Party I herein, in full and final settlement of her claim in the above reference.

2. On payment of the aforesaid sum of Rs. 6,500/- (Rupees Six Thousand Five Hundred Only) to Party I, all her disputes with Party II stand conclusively settled and she shall have no claim or demand of whatsoever nature against Party II.

3. Party II hereby agrees that it has no claim of whatsoever nature against Party I.

There shall be no order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No 28/44/90-LAB

The folowaing Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

J. M. de Almeida, Jt. Secretary (Labour).

Panaji, 9th July, 1996.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI
(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/46/90

Shri John D'Souza,
Rep. by Goa Trade &
Commercial Workers Union,
Panaji-Goa. — Workman/Party I

v/s

M/s. Kamat Engineering Company,
Zuarinagar - Goa. — Employer/Party II

Party I - Represented by Adv. Raju Mangueshkar.
Party II - Represented by Adv. G. K. Sardessai.

Panaji, Dated: 27-6-1996.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Inustrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 26th Sept., 1990 bearing No. 28/44/90-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Kamat Engineering Company, Zuarinagar-Goa, in terminating the services of Shri John D'Souza, with effect from 4-10-1989 is legal and justified?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/46/90 and registered A/D notices were issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Party I (for short, 'Workman') filed statement of claim at Exb. 5. The facts of the case in brief as pleaded by the workman are that he was employed with the Party II (for short, 'Employer' as a Turner w. e. f. 22-4-85. That the factory of the employer is situated at Sancoale Industrial Estate, Zuarinagar and the employer deals in steel fabrications and sheet metal works. That at the time when the workman was employed, the employer had work force of about 8 workmen and they became the members of Goa Trade & Commercial Workers' Union. That after the workers became the members of the above Union, an executive committee was elected from the said 8 workers and the workman was the President of the said executive committee. That thereafter a charter of demands was served on the employer seeking enhancement of wages and better service conditions. That on receipt of the charter of demands, the employer started harassing the workers by various means such as delaying the payment of their wages, Bonus etc. That by letter dated 4th October, 1989, the employer informed the workman that due to rapidly declining turn-over the financial position of the company had been deteriorating alarmingly and as such the employer had decided to terminate the services of the workmen with immediate effect. That on terminating the services of the workman the Union raised industrial dispute and the conciliation proceeding were held before the Labour Commissioner. That the conciliation proceedings failed and consequently the failure report was submitted by the Labour Commissioner to the Government. The workman contended that the employer had terminated the services by way of victimisation and the reasons given by the employer that the financial position of the company had deteriorated alarmingly is false. The workman contended that the employer had not followed the procedure laid down under the Act in terminating the services of the workman. The workman therefore stated that the termination of his services by the employer was illegal, unjustified and null and void and therefore he was entitled to be reinstated with full back wages.

3. The employer filed the written statement which is at Exb. 6. The employer in the written statement raised preliminary

objection as regards the maintainability of the reference. The employer stated that the Goa Trade & Commercial Workers Union had no authority to represent the workman and that the verification statement of claim made by the Secretary of the said Union was not proper. The employer admitted that the workman was employed as a Turner w. e. f., 22-4-85. The employer denied that the workman was the President of the executive committee and stated that the Goa Trade & Commercial Workers' Union had not communicated to the employer that the workers employed by him had become the members of the said Union. The employer admitted that the charter of demands was served by the said Union but denied that there was any relationship to the action taken by him to retrench the workman with the formation of the said Union. The employer also denied that he resorted to various modes of harassment as alleged by the workman. The employer denied that the services of the workman were terminated arbitrarily or by way of victimisation or that the payment of wages and bonus was being delayed by him. The employer stated that the financial position of the company had deteriorated alarmingly and inspite of the efforts made by the employer no improvement in the financial position could be made. The employer denied that he had violated any provisions of the Act in terminating the services of the workman. The employer further denied that the reasons given in the letter of termination were false or incorrect. The employer contended that the termination of the services of the workman was legal and justified and hence the workman was not entitled to any relief. The workman thereafter filed rejoinder at Exb. 7. On the pleading of the parties issues were framed at Exb. 8 and subsequently evidence of the workman was recorded. On 1-4-96 when the case was fixed for recording the evidence of the employer, the parties appeared along with their Advocates and submitted that the dispute between the parties was amicably settled. The parties filed settlement duly signed by them and prayed that the consent award be passed in terms of the settlement. I have gone through the terms of settlement filed at Exb. 19 and I am satisfied that the said terms are in the interest of the workman. I, therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement dated 1-4-96 Exb. 19.

ORDER

1. The Party No. II shall pay Party No. I a sum of Rs. 10.500/- (Rupees Ten Thousand Five Hundred Only) by a cheque No. 767866 dated 1-4-1996 drawn on State Bank of India, Zuarinagar, Goa in full an final settlement in all his claims in present reference.

2. In view of the above, Party No. I agree not to pursue the reference and treat his claims in the said reference as settled.

There shall be no order as to costs.

Inform the Government accordingly about the passing of the award.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No.Misc/Award/96-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

J. M. de Almeida, Jt. Secretary (Labour).

Panaji, 2nd July, 1996.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/17/93

Shri Arvind Pednekar,
Goa Municipal Workers' Union
Panaji-Goa. — Workman/Party I

v/s

The Chief Officer,
Pernem Municipal Council,
Pernem - Goa. — Employer/Party II

Workman-Party I- Represented by Adv. C. J. Mane
Employer-Party II-Absent.

Panaji, Dated : 27-5-1996.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Sec. 10 of the Industrial Disputes Act, 1947, the Government of Goa by order dated 28-1-1993 bearing No. 28/67/92 LAB referred the following dispute for adjudication by this Tribunal.

(1) "Whether the demand of the Workman Shri Arvind Pednekar represented by Goa Municipal Workers' Union for regularisation of his services as Peon with effect from 20-3-92 is legal and justified ?

(2) If not, to what relief the workman is entitled "?

2. On receipt of the reference a case was registered under No. IT/17/93 and Registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearence. The Party I (For short, 'Workman') filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was appointed on daily wages as part time worker on 9-3-90 vide order No. PMC/ADM/I/1/472/89-90 issued by the Chief Officer of the Party II (For short, 'Employer'). Subsequently, the workman was appointed on full time basis w. e. f., 21-3-92 vide order dated 20-3-92 bearing No. PMC/1/983/91-92. The post of Peon was sanctioned in the Council vide letter No. 24189-DMA (Pernem)/2120 dated 3rd November, 1989 and the same post is still vacant. That the workman is in continuous service of

the employer since 9-3-90 and he fulfills all the educational and other requirements of the post of Peon and he is also performing the duties of a Peon. The workman contended that the vacancy to the unskilled category of workman can be filled directly by the employer without notifying the vacancy to the Employment Exchange. The workman further contended that the Director of Municipal Administration could not have refused to regularise his services as a Peon as he was entitled to such regularisation. The workman therefore claimed that he is entitled to an order from this Tribunal directing the employer to regularise his services as Peon w. e. f. 20-3-92.

3. The employer filed the written statement at Exb. 5. The employer stated that the Director of Municipal Administration had refused to regularise the services of the workman on the ground that his candidature was not sponsored by the Employment Exchange. The employer stated that in view of the directions from the Director of Municipal Administration the employer was not in a position to regularise the services of the workman against the vacant post of Peon unless his name is sponsored by Employment Exchange. The employer produced the copies of the office memorandum dated 29th October, 1990 and 28th Jan., 1992 issued by the Government of Goa, in support of its case. The workman therefore filed rejoinder at Exb. 6.

4. On the pleadings of the parties, following issues were framed.

1. Whether the Party I/Union proves that its demand for regularisation of the services of workman Shri Arvind Pednekar w. e. f. 20-3-1992 is legal and justified ?
2. Whether the Party II proves that the candidature of the workman, Shri Arvind Pednekar was not sponsored by Employment Exchange and hence his service cannot be regularised ?
3. Whether the Paty I/Union is entitled to any relief ?
4. What award or order ?

My fidings on the issues are as under:

1. In the negative.
2. In the negative.
3. In the negative.
4. As per order below.

REASONS

5. *Issue No. 1:*— The claim of the workman is for regularisation of his services as Peon w. e. f., 20-3-92. i. e. from the date on which his part time employment was made full time. Adv. Mane representing the workman submitted that the workman was appointed on daily wages on a regular post of Peon but was paid salary at the end of the month. He submitted that the post of Peon was sanctioned by Government vide letter dated 3rd Nov., 1989, but the same post continued to be vacant. Adv. Mane further submitted that the workman performed all types of duties entrusted to him by the employer and he had put in more than 240 days of continuous service. He therefore submitted that the workman was entitled to regularisation of his service as Peon. Adv. Mane contended that the reasons given by the employer for rejecting the demand for regularisation of the workman are not the valid reasons. He submitted that for filling up the post of class IV categories, the vacancy need not be notified to the Employment Exchange and consequently the candidature of the workman need not be sponsored by the Employment Exchange. He therefore submitted that reason given by the employer for not regularising the services of the workman is invalid and improper. In support of his above contention Adv. Mane relied upon the decision of the Andhra Predesh High Court in the case of D. Venkat Rao and Others v/s Principal, D. A. Govt Polytechnic, reported in 1992 I LLJ. 651. He also relied upon the decision of the Supreme Court in the case of (1) Bhagwati Prasad v/s Delhi State Mineral Development Corporation reported in 1989 I LLJ 320; (2) Rajesh Kumar Soni & Others v/s Ministry of Environment & Forest and Wild Life and Others reported in 1992 SCC (L&S) 823; (3) Bhullar Nath Yadav and others v/s Mayo Hall Sports Complex, Allahabad & Others reported in 1990 II LLN, 948, in support of his contention that the workman is entitled for regularisation.

In the present case, only the workman has led evidence. The employer did not participate in the proceedings after the filing of the written statement. The case of the workman is that he has been working with the employer as a Peon since 9-3-90 continuously and since post of the Peon which was created by the Government vide order dated 3rd Nov., 1989 has been kept vacant, he is entitled to the regularisation of his services to the said post. Adv. Mane representing the workman has relied upon the decision of the Supreme Court in the case of (1) Bhagwati Prasad (supra) (2) Rejesh Kumar Soni (supra) and (3) Bhullar Nath Yadav (supra). I have gone through the said decisions. In the said case of Bhagwati Prasad (supra) the Supreme Court has laid down the principle of equal pay for equal work. The Supreme Court held that the Petitioners in the said case were entitled to equal pay at par with persons appointed on regular basis to similar posts or discharged similar duties and were entitled to the scale of pay and all allowances received from time to time. I am of the opinion that this authority of the Supreme Court is not applicable in the facts and circumstances of the present case. This is because the dispute referred by the Government is whether the demand of the workman for regularisation of his services as a Peon w. e. f. 20-3-92 is legal and justified. The dispute is not whether the workman is entitled to equal pay for equal work. In the case of Rajesh Kumar Soni (supra) and Bhullar Nath Yadav (supra), the principles laid down by the Supreme Court are almost identical, i. e., when the work is of premanent nature and if a person has put in more than 3 to 4 years of service on daily wages, he is entitled to be absorbed and his services are liable to be regularised. However, in the facts and circumstances of the present case it is to be seen whether the workman has made out a case for regularisation of his services. The workman in his deposition has stated that he was working with the Employer as a Peon since 9-3-1990 on daily wages, though he was appointed as a part time Gardener. This part of the statement of the workman has gone unchallenged. Also in the written statement filed by the employer, it was not disputed that the workman was performing the duties of a Peon as contended by the workman in his statement of claim. Therefore it is an established fact that though the workman was appointed on

temporary basis to the post of part time garden worker as per letter of appointment dated 9-3-90 Exb. W-1, he was in fact working as a Peon and was performing all the duties of a Peon. It is therefore to be seen whether the workman fulfilled the conditions for regularisation as laid down by the Government vide office memorandums dated 29th October, 1990 and 28th Jan., 1992. The said office memorandums have been produced by the employer along with the written statement. Para. 3 of the office memorandum issued by the Government of Goa reads as follows:

3. In regard to NMRs/Daily Wagers, Government has decided to consider regularisation of employees who have completed more than 5 years of continuous service subject to the following conditions:

i) That work should be available on a continuous basis.

ii) That in case any recruitment has taken place after 12th May, 1985, the candidate should have been sponsored by the Employment Exchange. This condition is imposed because the Central Government has already exempted appointment to Group 'D' posts from the purview of Employment Exchange where such appointments have taken place prior to 12th May, 1985.

iii) That the persons concerned should qualify for the post as per the recruitment rules applicable for departmental candidates. Here, age limit prescribed in the Recruitment Rules shall not be made applicable to such cases.

iv) that the resultant vacancy should not be filled up under any circumstances.

v) that on retirement of the incumbent, review may be carried out by the Department concerned whether the post is required or not any further.

The condition contained in clause (2) of para 3 of the office memorandum dated 29-10-90 that the candidate should have been sponsored by the Employment Exchange in case any recruitment has taken place after 12th March, 1985, was deleted by the office memorandum of the Government of Goa dated 28th Jan., 1992 and under the same office memorandum the benefits of the regulation in office memorandum dated 29-10-90 were extended to the daily wagers and workcharged staff working in the municipalities, State Government Undertaking and Semi Govt. Organisation on the same terms and conditions as applicable to such employees working in the Government Departments. Therefore, the workman being a daily wager employed in the Municipality is governed by the conditions laid down in the office Memorandum dated 29-10-90 for the purpose of regularisation in service. Para 3 of the said memorandum which is reproduced herein above lays down that the daily wage employee shall be entitled to be considered for regularisation if he has completed more than 5 years of continuous service. This is the basic requirement for eligibility. The Supreme Court in the case of State of Haryana & Other v/s Piara Singh and Others reported in AIR 1992 G. C. 2130, in para 13 of its judgment has held that there is nothing wrong in prescribing particular date by the Government by which prescribed period of service should have been put in for considering regularisation. In the said case, the Supreme Court has relied upon its earlier decision in the case of Dr. Sushma Sharma v/s State of Rajasthan reported in AIR 1985 SC 1367. Therefore, as per office Memorandum dated 29-10-90 the workman ought to have completed more than 5 years of continuous service in order to be eligible for considering his regularisation in service. The workman has himself admitted in his deposition that he was working with the employer since 9-3-90. His case is that his employment was made full time w. e. f., & 20-3-92 by order dated 20-3-92. The dispute for regularisation of service was raised before the employer by the workman on 5-4-92; the failure report Exb. w-5 was submitted by the Dy. Labour Commissioner to the Government on 13-11-92 and the reference was made by the Govt. on 28-1-93. Thus it is evident that when the dispute as regards regularisation of service was raised by the workman and on the date when the dispute was referred by the Government for adjudication, the workman had not completed 5 years of continuous service and hence he was not entitled for regularisation of service and hence his demand in that respect is not legal and justified. In the circumstances, I hold that the workman has failed to prove that his demand for regularisation of his serivice as Peon w. e. f., 20-3-92 is legal and justified. Hence, I answer the issue No. 1 in the negative.

6. *Issue No. 2:* The employer has filed only the written statement and along with the same has produced the two office memorandums dated 29-10-90 and 28-1-92 concerning regularisation of service of an employee. After the filing of the written statement the employer did not participate in the proceedings and consequently the deposition of the workman has gone unchallenged and also there is no evidence on behalf of the employer. The contention of the employer is that the workman's demand for regularisation of his services in the post of Peon was not considered because his candidature was not sponsored by the Employment Exchange. In support of his above contention, the employer has relied upon the office memorandum dated 29-10-90 and 28-1-92 issued by the Government of Goa which has been produced along with written statement. It is true that in the office memorandum dated 29-10-90 one of the conditions contained in para. 3 of the said memorandum was that in case any recruitment had taken place after 12th May, 1985, the candidate should have been sponsored by the Employment Exchange. However, the said condition was deleted by the Government vide office memorandum dated 28-1-92 as can be seen from the said memo which is produced by the employer. The workman has produced the failure report Exb. W-5 dated 13th Nov., 1992. In the said report it is stated that the workman raised the industrial dispute before the employer as regards regularisation of his service, on 5-4-92 which is after the issuing of office memorandum dated 29-1-92 by which the condition as regards sponsoring of the candidature by the Employment Exchange was deleted. It therefore follows that the employer could not have rejected the demand of the workman for regularisation of his services as Peon on the ground that his candidature was not sponsored by the Employment Exchange as the said condition was not in existence on the date when the demand was made by the workman. I, therefore hold that the employer has failed to prove that the services of the workman could not be regularised because his candidature was not sponsored by the Employment Exchange. In the circumstances, I answer the issue No. 2 in the negative.

7. *Issue No. 3*: The dispute which is referred for adjudication is whether the workman is entitled for regularisation of his

service w. e. f., 20-3-92. While deciding the issue No. 1, I have already held that the demand of the workman for regularisation of his service as Peon w. e. f., 20-3-92 is not legal and justified. This being the case the workman is not entitled to any relief. I, therefore, hold that the workman is not entitled to any relief and hence I answer the issue No. 3 in the negative.

In the circumstances, I pass the following order:

ORDER

It is hereby held that the demand of the workman Shri Arvind Pednekar for regularisation of his services as Peon w. e. f. 20th March, 1992 is not legal and justified as the workman had not completed more than 5 years of continuous service when he raised the dispute with the employer, Pernem Municipal Council, on 5-4-92 as also when the dispute was referred to by the Government of Goa vide order dated 28-1-93. It is hereby further held that the workman is not entitled to any relief.

There shall be no order as to costs.

Inform the Government accordingly.

Sd/-

(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/MISC/AWARDS/93-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

J. M. R. de Almeida, Jt. Secretary (Labour).

Panaji, 17th November, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI.

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/17/90

Shri Kalidas Chari,
Rep. by All Goa Gen. Employees Union,
Vasco-da-Gama, Goa. — Workman Party I

V/s

M/s Toyo Pharmaceuticals,
Ponda-Goa. — Employer/Party II

Party I - Represented by Adv. T. Pereira.
Party II - Represented by Adv. M. S. Bandodkar.

Panaji, Dated: 6-10-95.

AWARD

In exercise of the powers conferred by sub-Section (2) of Section 10 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Goa referred the following disputes for adjudication by this Tribunal.

"Whether the action of the management of M/s Toyo Pharmaceuticals, Ponda, in terminating the services of Shri Kalidas Chari with effect from 15-7-1998 is justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/17/90 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Party I (For short, 'Union') filed the statement of claim which is at Exb. 2. The facts of the case as pleaded by the Union are that the Party II (for short, 'Employer') is a partnership concern having its establishment at Ponda, Goa. By letter of appointment dated 8-10-1980, the employer appointed Mr. Kalidas Chari (for short, 'Workman') as supervisor-cum-charge hand and his duties were to carry out repairs and maintenance of all the items of machineries, electrical fuses/wiring, air conditioner servicing; maintaining of separate operations Books for each separate item of machinery showing the daily record of operational time of each machine, the spare parts replaced, repairs and maintenance work carried out on each machine and also do the work of Junior Operators whenever they remained absent. The Union contended that the workman had no subordinate staff under his control and the daily production assignment was assigned to the production staff by the production manager. That initially the total emoluments of the workman were Rs. 1000/- p.m. and as on 15-7-88 his total monthly salary was Rs. 1600/-. The Union contended that though the workman was designated as Supervisor-cum-Charge hand, he never exercised or discharged any functions of supervisory or managerial nature. That with effect from 13-7-1988, the employees of employer became the members of the Union and this fact was duly notified to the management of the employer. That the management was also notified about the names of the Local Committee office bearers of the Union by letter dated 14-7-88. That among the office bearers of the local committee, the workman Mr. Kalidas Chari was the Secretary. That on 14-7-88 itself, Mr. Mahesh Nagarvekar, the partner of the employer, orally informed the workman that his services stood terminated w.e.f. 14-7-88. That since no written order was given to the workman about the termination of his services, the workman reported for duty continuously for about 9 to 10 days and on each day he was refused entry into the premises of the employer's establishment . The Union contended that the termination of the services of the workman was by way of victimization because he had taken lead in organising and unionising the employees working with the employer and its other three sister concerns. That the Union therefore made a complaint to the Labour Commissioner by letter dated 5-8-88 complaining about the illegal termination of the services of the workman. However, the conciliation proceedings held by the officer of the Labour Commissioner, resulted in failure. The Union contended that the action of the

employer in terminating the services of the workman is illegal, unjustified and is by way of victimisation. The Union therefore claimed that the workman was entitled for reinstatement with full back wages.

3. The employer filed the written statement which is at Exb.4. The employer stated that workman Mr. Kalidas Chari was not a workman within the meaning of Sec. 2 (s) of the Industrial Disputes Act, 1947 as he was performing supervisory duties and his salary was more than Rs. 1600/- per month. The workman had entered into a partnership and started his own business contrary to the interest of the employer. The employer stated that it therefore lost confidence in the workman and thought it fit to terminate the services of the workman by letter dated 14-7-88. That however, when the said letter was sought to be served on the workman alongwith the compensation and other legal dues, the workman refused to accept the same. The employer denied that the termination of the services of the workman was without any reasons or that it was by way of victimization or unfair labour practice. The employer further stated that the action taken against the workman was justified and the workman was not entitled to any relief as claimed. Thereafter the Union filed the Rejoinder which is at Exb. 5.

4. On the pleadings of the parties issues were framed at Exb.6. After the deposition of the workman was recorded on behalf of the Union, the case was adjourned from time to time for filing the terms of settlement as the parties submitted that the settlement was in progress. On 19-9-95, when the case was fixed for hearing, Adv. Shri T. Pereira representing the Union and Adv. Shri M. S. Bandodkar, representing the employer submitted that the dispute between the Union and the employer was settled and they filed the Memo of Settlement dated 19-9-95 at Exb. 19 duly signed by the parties praying that the Award be passed in terms of the settlement. I have gone through the terms of settlement and I am satisfied that they are certainly in the interest of the workman Shri Kalidas Chari. I, therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement dated 19-9-1995 Exb. 19.

ORDER

1. It is agreed by the Management that Mr. Kalidas Chari shall be paid a sum of Rs. 41000/- (Rupees Forty One Thousand Only) in full and final settlement of his, all claim arising out of the employment and whatsoever nature including claims arising out of the reference.

2. Mr. Kalidas Chari, shall accept the amount mentioned in Clause (1) in full and final settlement of his claim arising out of his employment and the above reference and further confirms that he shall have no claim of whatsoever nature against the Firm including any claim of reinstatement or re-employment.

3. It is agreed between the parties that the workman concerned in the above reference shall be paid the amount mentioned in clause (1) in four equal instalments as follows, on

19-09-95 — 25%
11-10-95 — 25%
11-11-95 — 25%
11-12-95 — 25%

4. It is agreed by the workman that amount mentioned in clause (1) shall also include Gratuity, Leave Salary, Bonus, Ex-gratia if any.

No order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/29/94-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

J. M. R. de Almeida, Jt. Secretary (Labour).

Panaji, 17th November, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/86/94

Shri Y. R. Parab,
Rep. by A. C. G. L. Workers Union,
Honda, Satari-Goa. — Workman/Party I

V/s

M/s Automobile Corporation
of Goa Ltd.,
Honda, Satari- Goa. — Employer/Party II

Party I represented by Shri Subhas Naik.
Party II represented by Adv. M. S. Bandodkar.

Panaji, Dated: 30-10-95.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order dated 17-8-94 bearing No. 28/29/94-LAB referred the following dispute for adjudication by the Tribunal.

"Whether the action of the management of M/s Automobile Corporation of Goa Ltd., Honda, Satari, Goa, in terminating the services of Shri Y. R. Parab, with effect from 24-2-93 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/86/94 and registered A/D notice was issued to the

parties. In pursuance of the said notice, the parties put in their appearance. The Party I (for short, 'Union') filed its statement of claim which is at Exb. 3. The facts of the case in brief as pleaded by the Union are that the Party II (for short, 'Employer') is engaged in the business of the production of spare parts for various motor vehicles, and is having its factory situated at Honda, Satari, Goa. The workers of the employer are the members of the Trade Union known as ACGL. Workers' union, and the said union is registered under the provisions of the Trade Union Act. Shri Y. R. Parab, (for short, 'Workman') was employed with the employer and also was a member of the Union. On 30-5-90 the Union submitted charter of demands to the employer and a settlement was signed on 1st September, 1990. However, though the issue of productivity to be achieved by the workmen was not specifically decided, the employer unilaterally displayed a chart on the notice board mentioning therein the productivity to be achieved by each workman. Due to this, there was industrial unrest and the employer issued false charge sheets to 7 workmen including the workman Shri Y. R. Parab who the employer thought were taking active interest in Trade Union activities. Subsequently on 16th January, 1991, the employer entered into a settlement with the Union as regards the achievement of the productivity by each workman and the cordial relations were restored between the Union and the employer. However, inspite of the signing of the settlement and restoration of the cordial relations the employer did not withdraw the charge sheets issued to 7 workmen and the enquiry against them was proceeded with. The said 7 workmen were suspended and were kept under suspension for over two years. The enquiry commenced on 8th December, 1990 and after the completion of the enquiry,the Inquiry Officer submitted his findings on 24.12.92 holding the workman guilty of the charges levelled against him. On receipt of the findings the employer issued a show cause notice dated 30th January, 1993 to the workman as to why he should not be dismissed from service. The workman replied to the said show cause notice by reply dated 22.2.93. However, the employer, by order dated 24.2.93 dismissed the workman from service with immediate effect. The Union contended that the charge sheet issued to the workman was vague, malafide, vindictive and false and further that there was violation of principles of natural justice in conducting the enquiry. The Union also contended that the findings of the enquiry officer were perverse and were not supported by evidence on record. The Union therefore contended that the order of termination of the service of workman was illegal and unjustified and hence he was entitled to reinstatement with full back wages.

3. The Employer filed the written statement which is at Exb. 2. The employer admitted that the workman was employed with the employer as an Operator. The employer denied that the issue as regards the productivity was settled in January, 1991 and stated that the said issue was settled in September, 1990 itself. The employer justified its action in not withdrawing the charge sheets issued to 7 workmen including the workman Mr. Y. R. Parab as according to the employer they were the main persons who instigated and supported actively the workmen in resorting to goslow in work. The employer denied that the charge sheet was issued to the workman with malafide intention or vindictively or that the allegations made against the workman in the charge sheet were false and flimsy. The employer denied that the charge sheet was vague or that the enquiry was held in violation of the principles of natural justice. The employer also denied that the findings of the enquiry officer were perverse or that they were not based on the evidence on record. The employer stated that since the charges against the workman were proved the termination of his services was legal and justified and hence the workman was not entitled to any relief as claimed.

4. Thereafter the Union filed rejoinder which is at Exb. 4 on the pleadings of the parties issues were framed at Exb. 5. After the issues were framed the case was fixed for evidence of the Union. However, on 5-10-95, Shri V. D. Parulekar, the General Secretary of the Union, the workman and Adv. M. S. Bandodkar for the employer appeared and submitted that the dispute between the parties was amicably settled and filed the terms of settlement dated 5-10-95 at Exb. 8, duly signed by the parties, praying that the consent Award be passed in terms of the settlement. I have gone through the terms of the settlement Exb. 8 and I am satisfied that they are certainly in the interest of the workman. I, therefore, accept the submissions made by the parties and pass the consent Award in terms of the settlement dated 5-10-95 Exb.8.

ORDER

1. It is agreed by the Employer/Party II that Rs. 71080/- (Rupees Seventy One Thousand and Eighty Only) shall be paid to Shri Y. R. Parab, in full & final settlement of his all claims arising out of employment of whatsoever nature including claims arising out of above reference.

2. Mr. Y.R. Parab shall accept the amount mentioned in clause (1) above n full and final settlement of his claim arising out of his employment and the above reference and further confirms that he shall have no claim of whatsoever nature against the Company,including any claim of reinstatement or re-employment.

3. It is agreed by the workman that the amount mentioned in clause (1) shall also include Notice Pay, Gratuity, Provident Fund, Bonus, Ex-Gratia etc. if any up to date.

There shall be no order as to costs. Inform the Government accordingly.

Sd/-

(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/21/94-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

J. M. de Almeida, Jt. Secretary (Labour).

Panaji, 10th January, 1996.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/89/94.

Shri Gokuldas M. Sawant
Akhada, St. Estevam
Tiswadi Goa. — Workman/Part I

V/s

M/s Dhanalaxmi Shipping (P) Ltd., — Employer/Party II
Vasco da Gama

Party I/Workman represented by Adv. P. N. Sawant
Party II/Employer represented by Adv. P. J. Kamat

Panaji: Dated: 14-11-1995.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (i) of section-10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by order dated 12-8-94 bearing No. 28/21/94-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Dhanalaxmi Shipping Pvt. Ltd., Vasco in terminating the services of Shri Gokuldas M. Sawant, w.e.f. 1-11-1988 is legal end justified?

If not, to what relief the workman is entitled?"

Subsequently by corrigendum dated 30-6-1995 bearing No. 28/21/94-LAB the Government amended the reference by substituting the date of termination of service from 1-11-88 to 11-12-88.

2. On receipt of the reference, a case was registered under No. IT/89/94 and registered A/D/ notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The party I (For short "workman") filed his statement of claim which is at Exb. 5. The facts of the case in brief as pleaded by the workman are that he was initially employed with M/s Eureka Shipping Co. Ltd., Vasco da Gama, as a Khalashi w. e. f. 1-4-1972 vide letter of appointment dated 24-3-1972 and subsequently his services were confirmed in the same post w. e. f. 1-4-73 vide letter dated 31-7-73. That in the year 1982, the said shipping company was taken over by the Party . (For shorty "Employer") and the services of the employees including that of the workman were transferred to the employer, in the same post and on the same terms and conditions as mentioned in the earlier letter dated 29-9-82. That the duty of the workman was off-shore on barge and was always posted for first shift i. e. from 1st to 15 of every month. That on 13-7-1988, when he was on duty, he fell sick and when he approached the office, he was allowed to go home and take the treatment from the doctor. That the workman had sent the intimation to the employer through his nephew Shri Shamba Sawant in the month of August, September, October and November, 1988 about his sickness since he had not recovered and the employer had informed the workman through his nephew that he should resume his duties only after he had recovered from the sickness. That accordingly, the workman reported for work in the last week of November, 1988 after he had recovered from his sickness, but was not allowed to resume the duties and was told that he should report in the next month. However, in January 1989 also he was not allowed to resume the duties. That the workman again went in February 1989 to resume the duties but was told that he should report for work only when he receives a letter to report for work from the employer. That since the workman did not receive the letter from the employer for a long time, he approached the United Bargemen's Association, Vasco da Gama. However, since the workman found that the said Union was not taking proper interest in the matter, he made a direct representation to the employer in the month of January, 1993. That the employer replied to the said representation by reply dated 18-3-93 but did not allow the workman to resume his duties. The contention of the workman is that the action of the employer in not allowing him to resume his duties amounts to termination of his services and the same is illegal and unjustified. The workman therefore, claimed reinstatement with full back wages.

3. The employer filed the Written Statement which is at Exb. 6. The employer contended that no reference could have been made after a delay of 4½ years, in raising the dispute and also that the reference was not maintainable under Sec. 2A of the I. D. Act, 1947. The employer denied that the workman fell sick while on duty on 13-10-88 and that he approached the office who allowed him to go home and take the treatment from the Doctor. The employer stated that the workman never informed that he was sick nor he produced any medical certificate. The employer also denied that the workman had sent intimation through Shri Shamba Sawant about his sickness or that intimation was sent through said Shri Sawant that the workman should report for work only after he recover from sickness. The employer further denied that the workman reported for work in last week of November, 1988 or that he was told that he should report for work only when he receives a letter to that effect from the employer. The employer denied that the workman approached the United Bargemen's Association and that a representation was made to it through the said Association. The employer stated that the workan had deserted his services for a period of more than 4½ years and his where about were not known. The employer further stated that continuous absence of the workman for number of years without any reason or justification amounted to abandonment of services and hence the workman was not entitled to claim any relief and the reference was liable to be rejected.

4. Thereafter, when the case was fixed for hearing on 14-11-1995, the workman alongwith his Advocate, Shri P. M. Sawant and Shri P. J. Kamat, Advocate representing the employer appeared. They submitted that the matter between the parties was amicably settled and they filed the Consent Terms dated 14-11-95 at Exb. 7 duly signed by the parties and prayed that Consent Award be passed in terms of the settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workman. I

therefore, accept the submissions made by the parties and pass the Consent Award in terms of settlement dated 14-11-95 Exb. 7.

ORDER

1. It is agreed between the parties that termination of services of Mr. Gokuldas M. Sawant, Party I, is legal and justified and proper.

2. It is agreed between the parties that Mr. Gokuldas M. Sawant, Party I, shall be paid a sum of Rs. 30,000/- (Rupees thirty thousand only) in full and final settlement of all his dues arising out of the termination of his services which includes Gratuity, Compensation, bonus, earned wages etc,.

3. It is agreed between the parties that the said amount of Rs. 30,000/- shall be paid to Mr. Gokuldas M. Sawant in three equal instalments of Rs. 10,000/-. The first will be paid on the date of signing this settlement; the second will be paid on or before 30th November, 1995 and the last will be paid on or before 30th December, 1995.

4. It is agreed and declared that the amount payable by the party II to the workman/Party I in the manner hereinabove provided for are in full and final settlement and satisfaction of all the claim of Party I against the Party II including claim for compensation for loss of office or otherwise howsoever.

5. It is agreed between the parties that in case of default in payment of any instalments, the party II shall pay on interest of 10% on such defaulted instalments till the actual payment is made.

No order as to cost. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/58/92-LAB (Part)

The following Award given by the Industrial Tribunal, Goa, Daman an Diu is hereby published as required uner the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

J. M. de Almeida, Jt. Secretary (Labour).

Panaji, 4th January, 96.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/20/93

M/s Indo Swiss Jewels Ltd.,
Karaswado - Mapusa, Goa. —Party I

V/s

Workmen Rep. by
Goa Trade & Commercial
Workers' Union.
Panaji - Goa. —Party II

Employer-Party I represented by Adv. Shri A. N. S. Nadkarni.
Workmen-Party II represented by Shri Subhas Naik.

Panaji, Dated: 17-11-95.

AWARD

In exercise of the powers conferred by Sub-Section 6 of Section 25-N of the Industrial Disputes Act,1947 the Government of Goa by order dated 26-2-93 bearing No. 28/58/92-LAB referred the following matter for adjudication by this Tribunal.

(1) "Whether the proposal of M/s Indo Swiss Jewels Ltd., Karaswado, Mapusa, Goa, seeking permission to retrench 49 workmen out of the total existing workmen in their factory at Tivim Industrial Estate is proper, legal and justified and to what extent the work force is surplus ?

(2) If so, to what relief and/or benefit and to what extent each of such workman to be retrenched is entitled ?"

2. On receipt of the reference a case wa registered under No. IT/20/93 and Registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The employer/Party I (for short, 'employer') filed its statement of claim which is at Exb. 4. The fact of the case in brief as pleaded by the employer are that the employer is engaged in the manufacture of jewel bearings for watches. That the said jewels are basically required for mechanical watches with a hand wound mechanical watch using 17 jewels and the automatic watch require 21 jewels. That in respect of Quartz watches, Timex Quartz watches use no jewels at all while HMT, Allwyn and Titan Quartz watches use 2, 3 an 4 jewels respectively. That the employer has its registered office and factory at Tivim Industrial Estate, Goa, and employs 117 workers. That in the international market there has been a shift from mechanical to quartz watches as a result of which the demand for production of mechanical watches has been intensifyingly reduced and consequently there is a fall in demand for watch jewels. That the sale of the products of the employer declined from 29.76 million jewels in 1990 to 21.29 million jewels in 1991 and further declined to 20.30 million in 1992. That the HMT Company who accounted for over 70% of the total production of the employer decided to convert its largest mechanical watch making Unit at Tumkur into 100% quartz making Unit and hence the said Company intimated to the employer and other jewel manufacturers that they would not need any jewels for mechanical watches from April, 1993. That similarly, Hyderabad Allwyn Company, Indo Swiss Times Ltd., and Jayna Watches who were the purchasers of the jewels from the employer considerably reduced their purchases of

jewels from the employer during the year 1992-93. The employer contended that due to the craze for quartz watches it expected further deterioration in the sale of jewel. The employer further contended that over 90% inputs for its product are imported and the cost of imported input during the past 5 years have gone up by 5 to 6 times partly because of the increase in the cost of input in foreign countries and partly because of money devaluation of Indian Rupee coupled with successive increase in import duty in inputs, though the selling price remained stagnant due to the excess of supply over demand and also due to stiff competition in the market. That due to the above factors the largest jewel making Co., namely Swiss India was closed and there were no purchasers for its brand new machinery and similar was the case in respect of Precision Jewels at Tarapur, United Watches Ltd., and Karnataka Jewels Ltd. That the employer tried to get export orders but did not succeed as there was hardly any production of mechanical watches in developed countries and the Ruby jewels which the employer manufactured gave way to ceramic jewels costing half of the cost of Ruby jewels. The contention of the employer is that due to the drastic and continuous fall in sale of its products has resulted in increased labour cost, as the salary and the wage bill has been increasing due to the rising Dearness Allowance and also due to better benefits and other amenities provided by the employer to the employees. The employer contended that as a result of the above circumstances the profitability of the employer declined considerably for the past 4 years at if effective measures were not taken in re-organisation of the Union, there was likelihood of closing down of the Union thereby depriving the work force of its employment and livelihood. The employer further contended that the machinery for making jewels cannot be put to use for any other product except another watch component namely Rotor Magnet. That the employer attemped to produce the above product but was unsuccessful because the raw material which was being procured by HMT from Japan could not be procured because the principals in Japan thought that the production in India would threaten their own market; the material from other sources which was available in large blocks was not suitable for jewel making machines and even modifications to the machines was of no help and the work force refused to co-operate forcing the employer to abandon the product after having spent over 25 lacs on material, machine adaptation an development. The employer contended that it had therefore no alternative but to re-organise its business by reducing its production and consequently adjusting its work force accordingly. That the employer therefore made an application to the Government u/s 25-N of the Industrial Dispute Act, 1947 and Minister for Labour after hearing the employer and the Party II Goa Trade and Commercial Workers Union (for short, 'Union') by order dated 22-1-93 refused to give permission to retrench 49 workmen. That the employer being agrieved by the said order made an application dated 25-1-93 seeking reference for adjudication u/s 25-N of the Industrial Disputes Act 1947. The employer contended that the order of the Minister for Labour is perverse, arbitrary an capricious. The employer also contended that the findings of the Minister for Labour that the jewels are used in mechanical as well as in quartz watches is erroneous as only 2 to 4 jewels are used quartz watches as against 17 to 21 in mechanical watches and in some quartz watches no jewels are used at all. The employer further contended that the Minister for Labour failed to consider the fact that the HMT Company who accounted for 70% of the employer's production converted their largest mechanical watch making Unit at Tumkur into a 100% quartz making Unit and intimated to the employer that they would not need any jewels for mechanical watches. The employer stated that the National Productivity Council who had conducted the study at the request of the Management and the Union have determined the achievable capacity of the employer at 40 million with a work force of 110 work persons. The employer therefore contended that if the demand of sales is not more than 20 million, the number of work persons required by the employer should not be more than 50%. The employer further contended that whether retrenchment was justified or not did not depend upon the fact that those who are retrenched would be thrown out of job but the adverse effect that retention of work would have on the business and on whether retention would mean dead weight on an uneconomic surplus. The employer in the circumstances claim that it was entitled to permission from this Tribunal to retrench 49 workmen out of the total work force of 117.

3. The Union filed the written statement which is at Exb. 9. At the outset the Union contended that since the employer in the statement of claim had stated that the Minister for Labour is not an authority appointed u/s 25-N of the I. D. Act, 1947, he had no jurisdiction to pass the order rejecting the application of the employer, and consequently this Tribunal has no jurisdiction & authority to try the present reference. The Union stated that the issue as regards the jurisdiction and the authority of the Minister for Labour and that of this Tribunal should be tried as a preliminary issue. The Union further stated that this Tribunal had a limited jurisdiction as far as trying the present matter. The Union contended that this Tribunal had jurisdiction only to review the order passed by the Labour Minister and in case it is found that the said order is fair and reasonable this Tribunal has no jurisdiction to set it aside and substitute the decision of the Minister of Labour with its own decision. The Union admited that the employer has its registered office and factory at Tivim Industrial Estate, Mapusa, Goa, but denied that the employer employed 117 workmen and stated that the number of workmen employed by the employer exceeded 117. The Union denied that due to the shift in the International market from mechanical to quartz watches there was a fall in demand for watch jewels. The Union also denied that the sales of the products of the employer has declined drastically from 29.76 million jewels in 1990 to 21.29 million jewels in 1991 an further to 20.30 million jewels in 1992. The Union further denied that the demand for watch jewels has been continuously shrinking year after year as mechanical watches are gradually being replaced by quartz watches. The Union admitted that the employer had made an application to the appropriate Government vide letter dated 23-11-92 seeking permission to retrench 49 workmen as per Sec. 25-N of the Industrial Dispute Act, 1947. The Union also admitted that the Minister for Labour passed an order dated 22-1-93 rejecting the application to the employer. The union denied that the order passed by the Minister for Labour is perverse, arbitrary and capricious. The union stated that the said order was passed by the Minister for Labour after considering al the facts before him and he arrived at the said decision after giving a reasoned findings. The union contended that the proposal of the employer for retrenching 49 workmen out of 117 workmen was not proper, legal and justified. The union therefore prayed

that the premission as prayed for by the employer to retrench 49 workmen should not be granted. Thereafter the employer filed a rejoinder which is at Exb. 10. The employer in the rejoinder contended that in case the Government refused permission and subsequently on and application for review is made, refers the matter to the Tribunal, what is sought to be referred is the matter i. e. the application for permission made by the employer and not the question of the legality of the order and therefore the Tribunal has to consider again the application for permission including the question as to what extent retrenchment is necessary. The employer denied that this Tribunal had no jurisdiction or authority to decide the reference. The employer stated that since the reference has been validly made by the competent authority this Tribunal has jurisdiction to decide the same. The employer contended that assuming that the Labour Minister was not the competent authority to pass the order rejecting the application of the employer, yet it is the "matter" and not the order which has been referred for adjudication and the said matter has been referred to the Tribunal by the competent authority and therefore this Tribunal has authority and jurisdiction to decide the said matter. The employer denied that the jurisdiction of this Tribunal was limited as contended by the Union.

4. After the rejoinder was filed, on the basis of the pleadings of both the parties and after hearing both the parties, the following preliminary issue was framed:

> "whether the present reference is not maintainable for the reasons stated by the workmen in the written statement ?"

The said preliminary issue was decided by order dated 21-4-93 holding that the present reference was perfectly maintainable and the parties were directed to proceed further with the case. Thereafter following issues were framed at Exb.15.

1. "Does Party I-Employer prove that there are compelling reasons for carrying out retrenchment of some of the workers working in his establishment ?
2. If yes, how many workers are liable to be retrenched ?
3. If yes, to what reliefs the retrenched workers are entitled to ?
4. What award or order ?"

5. After the issues were framed, an order dated 4-5-93 bearing No. 28/58/92-LAB(Part) was received from the Government of Goa whereby the order datedd 26-2-93 was amended. By the said order in the schedule to the earlier order in item (1) the word, "Proper" and the words, "to what extent the work force is surplus" were omitted. Also item (2) of the schedule of the said order dated 26-2-93 was also omitted. In view of the amendment of the earlier order dated 26-2-93 whereby the matter was referred to this Tribunal, the reference after amendment stood as follows:

> "Whether the proposal of M/s Indo Jewels Ltd., Karaswado, Mapusa, Goa seeking permission to retrench 49 workmen out of the total existing workmen in their factory at Tivim Industrial Estate is legal and justified?

6. The Union thereafter filed an application dated 5th May, 1993 prying that issues be reframed in view of the amedment of the order of reference. The Union also filed an application dated 3rd May, 1993 seeking to amend the written statement in view of the amendment to the order of reference. The employer filed its reply to the said application for amendment of the written statement filed by the Union objecting to the same. However, the said amendment application was not decided and the parties led evidence on the issues which were framed at Exb. 15. After the evidence of both the parties was recorded and when the matter was fixed for arguments Shri Subhas Naik representing the Union brought to my notice that the amendment application and also the application of the union for reframing of the issue was not decided by my learned Predecessor. The Union submitted that even if the amendment application was allowed at this stage, the Union would not lead any further evidence in the matter and also if the issues were reframed no further evidence would be led by the Union on the said issue as the evidence in that respect was already on record. Adv. Nadkarni representing the employer submitted that since the Union had stated that it woul not lead any further evidence in the matter, the employer had no objection for allowing the amendment application as also for reframing of the issues. Accordingly, by order dated 15-6-95 the application for amendment of the written statement by the Union was allowed and also the issues were reframed on 3-7-95 at Exb. 73.

7. In the amended written statement the Union stated that the jewels manufactured by the employer are used in mechanical, automatic and quartz watches. The Union further stated that the employer manufactured Rotar magnets which had very high demand in the market for quartz watches and the commercial production of Rotar magnets was starded by the employer during the financial year 1991-92. The Union stated that the Rotar magnets were manufactured by the employer by using the same machinery and the same work force and no modifications or alterations were required in the existing machinery to produce Rotar Magnets, nor any additional training was required to the existing work for producing the same. The Union further stated that since January, 1993 the employer manufactured over 25 thousand Rotar magnets and the short fall in demand for jewels if any was made up by the employer by manufacutring and products alternate which had a very high demand in the market. The Union contended that the total work force of the employer was 117 which was divided into Managerial staff, Office staff, Supervisory staff, permanent work staff, probation work staff, training workmen staff and casual workmen staff.

The Union denied that there was a cutback in the production of jewels in the establishment of the employer. The Union stated that although the licenced capacity of the employer's unit is 24 million pieces, the workmen have been producing even 29 million pieces. The Union contended that the employer had re-organised its business by manufacturing another compenent namely Rotar magnet. The Union further contended that during the period 1992-93 the employer had recruited new casual workmen and stated that this fact proved that there was no surplus of work force as otherwise the employer would not have recruited new causal workmen. The Union contended that the application filed the employer for retrenchment of the workmen was malafide and was by way of victimisation. The

Union further stated that the employer had laid off the said 49 workmen and the said application was rejected by the Government and that only thereafter that the employer filed the application date 23-11-92 before the Government for permission to retrench the said 49 workmen. The Union therefore contended that the claim of the employer that permission should be granted to retrench 49 workmen, should be rejected.

8. The issues which were reframed by order dated 3-7-95 at Exb. 73 are as follows:

1. Does the Party I/Employer proves that there are compelling reasons for carrying out retrenchment of workmen in their establishment ?

2. If yes, does the Party I/Employer prove that their proposal for permission to retrench 49 workmen is legal and justified ?

3. If yes, how many be permitted to be retrenched ?

4. What award ?

9. My findings on the issues are as follows:

1. In the affirmative.

2. In the affirmative.

3. Workmen are permited to be retrenched

4. As per order below.

REASONS

10. Before I proceed to deal with the issues. I shall first deal with the objection raised by the Union to the effect that this Tribunal has no jurisdiction to decide the present reference. Shri Subhas Naik representing the Union submitted that in the course of the proceedings before this Tribunal in the reply dated 5th Sept., 1994 Exb. 57, the employer has admitted that as on 1-8-94 its workforce was 72 comprising of 61 confirmed workmen and 11 probationers. He submitted that as per Sec. 25-N of the Industrial Disputes Act, permission to retrench is required in case the employer employees 100 or more workmen in the factory. He submitted that as admitted by the employer, that it employes less than 100 workmen as on 1-8-94, Sec. 25-N of the Industrial Disputes Act, 1947 was not attracted and hence the reference was not maintainable an consequently this Tribunal has no jurisdiction to decide the reference. Adv. Nadkarni, representing the employer, on the other hand submitted that the Tribunal cannot travel beyond the terms of reference and the Tribunal cannot refuse to adjudicate the matter referred to it once the reference is validly made. He further submitted that the Tribunal cannot travel beyond the terms of reference and cannot take into account the subsequent events. In support of his contentions. Adv. Nadkarni relied upon the decision of the Supreme Court in the case of Jai Bhagwan v/s Amballa, Central Cooperative Society, reported in AIR 1984 SC 286; pottery Mazodor Panchayat v/s. The Perfect Pottery Co. Ltd., reported in AIR 1979 SC 1356 and that of the Punjab and Haryana High Court in the case of K. K. Rattan v/s Presiding Officer, Labour Court, Chandigarh reported in 1993 II CLR 62.

I have carefully considered the arguments advanced by both the parties. It is true that in the reply dated 5th Sept.,1994 Exb. 57 employer has stated that as on 1-8-94 it employed 72 workers comprising of 61 confirmed workmen and 11 probationers. However, I do not agree with the submissions of Shri Subhas Naik that this fact ousts the jurisdiction of this Tribunal to decide the reference. What is to be seen is whether on the date when the reference was made by the Government the employer employed more than 100 workers, so that Section 25-N of the Industrial Disputes Act, 1947 was attracted. In the present case it is not disputed that when the reference was made by the Government the employer employed more than 100 workers. Therefore, permission to retrench the workers was required and hence Sec. 25-N of the I. D. Act, 1947 was attracted. Now, if subsequently for some reasons the work force has fallen below 100, that will not oust the jurisdiction of the Tribunal to decide the reference. The employer has sought permission to retrench 49 workers out of 117. That means the employer wants to bring down the workforce to 68 whereas the employer in its reply has admitted that the work force as on 1-8-94 is 72. That means, according to the employer there is still an excess of 4 workers. I have considered the authorities relied upon by Adv. Nadkarni representing the employer. The said authorities lay down the proposition that the Tribunal is bound to answer the reference as referred to it and the Tribunal cannot go beyond the terms of the reference. The reference made by the Government is whether the proposal of the employer seeking permission to retrench 49 workers out of total existing workmen in their factory at Tivim Industrial Estate is legal an justified. The employer has contended that on the date when the reference was made it employed 117 workers. Therefore, admittedly the workforce of the employer was more than 100 when the reference was made. In the circumstances, I agree with the submissions of Adv. Nadkarni that though it is admitted by the employer in the course of the proceedings that some workers have left and the present work force is 72, still the Tribunal is bound to decide the matter in terms of the reference once it is validly made. I, therefore, dismiss the objection of the Union and hold that this Tribunal has jurisdiction to decide the reference referred to it & hence I proceed further to deal with the issues.

11. Issue Nos. 1, 2 and 3 are taken up together as they are inter related to one another. Adv. Shri Nadkarni appearing for the employer submitted that in the statement of claim filed by the employer all the details as regards the compelling reasons to retrench 49 workmen have been given and in support of the details given in the statement of claim, Shri M. L. Ahuja, the Managing Director, hass filed his Affidavit. He submitted that the Union has filed the written statement, but instead of making any specific contentions, the Union has only barely denied the contentions made by the employer in the statement of claim. He further contended that no evidence is produced by the Union that the proposal of the employer to retrench 49 workmen is not bonafide and/or is illegal and unjustified, nor the Union could shatter the testimony of Shri M. L. Ahuja in his cross examination. According to Shri Nadkarni, the employer produced all the documents to prove the contention of the employer that there are compelling reasons to justify the retrenchment of 49 workmen. He referred to Sec. 25-N (3) of the Industrial Disputes Act, 1947 and submitted that the

factors to be considered by the Government or the Authority in granting or refusing permission are mentioned in the said Section , whereas Sec.25N (6) which provides for referring of the matter to the Tribunal for adjudication does not contain the said factors. He however submitted that it did not mean that the Tribunal should not consider the said factors as laid down in Sec.25 N (3) of the I. D. Act, 1947, but they should be taken into consideration as understood and explained by the Courts. Adv. Nadkarni contended that when the reference is made by the Government under Sec. 25 N (6) of the Act, the Tribunal has to decide the issue of retrenchment de novo and not the question of legality of the order passed by the Government. In support of his this contention he relied upon the decision of the Bombay High Court in the case of Association of Engineering Workers v/s Indian Hume Pipe Company reported in 1986 I LLJ 450. Adv. Nadkarni submitted that it is within the discretion of the employer to organise his business in the manner he thinks best and to decide the strength of his labour force for reasons of economy and convenience, and the only check is that this decision should not be actuated by malafides or by way of victimisation, or unfair labour practice. In support of his this contention he relied upon the decision of the Supreme Court in the case of Parry & Company Ltd., v/s Second Industrial Tribunal, reported in 30 FJR 165. Adv. Nadkarni also relied upon the decision of the Supreme Court in the case of workman of Meenakshi Mills & Others v/s Meenakshi Mills Ltd., reported in 1992 SCC (L&S) 679 and that of the Kerala High Court in the case of Muslim Printing A P Company Ltd., v/s Secretary to Government, reported in 1992 LLR 680 in support of his above contentions, namely that (1) Employer can retrench his workmen (2) Retrenchment must be only for proper reasons i. e. it must not be by way of victimisation or unfair labour practice or malafide and (3) If the policy is bonafide, the Tribunal cannot question its propriety. He submitted that in the absence of any pleadings by the Union as regards victimisation or unfair labour practice, the Tribunal cannot go into the question of victimisation or unfair labour practice as it is to be specifically pleaded and also all the necessary particulars are to be furnished so that the employer can effectually meet the said charge. As regars the compelling reasons to retrench the 49 workmen, Adv. Nadkarni submitted that the same was sufficiently proved by the employer through the evidence of Shri M. L. Ahuja, the Managing Director of the employer and also by documents, in the course of evidence. He submitted that the employer has produced annual report for the year 1990-91; 1991-92 and 1992-93 and from these reports it can be seen that there is a decline in the sale of jewels manufactured by the employer and also there is a decline in the production of the Jewels for the above said period. He also submitted that the employer has produced various letters from which it can be seen that there is a decline in demand for mechanical watches and consequently there is also decline in demand for Jewels also that HMT Company had decided to convert their largest mechanical watch making unit at Tumkur into a hundred percent quartz making unit. He further submitted that from the annual reports it can be also seen that there is increase in the cost of the inputs as also in the custom duty, and import duty, and that the minimum wages has gone up by 235% from 1-1-87 to 1-1-93. Adv. Nadkarni submitted that the employer has produced the order of Himachal Pradesh Government dated 7th February, 1993 permitting United Diamonds Limited to retrench 60 out of 113 workmen, and the employer has also produced the copies of the Advertisements which appeared in Times of India as regards the sale of the property of M/s. Precision Jewels Ltd. He contended that this showed that after the closure of M/s Precision Jewels, the Maharashtra State Financial Corporation was not able to dispose of the machinery for want of buyers. He also referred to the other documents produced by the employer namely the letter dated 17-10-92 from State Bank of India and the auction notice issued by the Customs Department for non clearance of the goods, which according to Adv. Nadkarni proves the financial condition of the employer. He also referred to the stock registers produced by the employer which show that the stock of Jewels has gone up from 0.17 million jewels as on 31-3-90 to 2.9 as on 31-3-92, thereby proving that there was considerable decline in demand for jewels. He further referred to the balance sheets produced by the employer and submitted that the said documents would show that the profit of the employer has come down drastically from 62.17 lakhs in 1989 to 29.25 lakhs in 1992. He contended that merely because the employer has been making profits it would not be a ground for refusing permission to retrench the workmen. He also referred to the report submitted by the National Productivity Council who conducted study at the request jointly made by the management of the employer and the Union, and submitted that capacity determined by the council is 40 million jewels vis-a-vis the strength of the workforce of 110 persons. He therefore submitted that since the productivity of the employer has gone below 20 million jewels, the retrenchment of 49 workmen was justified. As regards the settlement dated 3-1-1992 signed by the employer, Adv. Nadkarni submitted that it was a short term settlement valid upto 31-12-92 and it was signed because the employer was making efforts to improve its business and was expecting that the business would pick up and hence enhanced minimum production of 29 million jewels was fixed. He contended that the above expectations did not materialise as the arrival of quartz watches was an irreversible change in the market and consequently the sale of the jewels of the employer touched a low of 11.56 million jewels in 1993-94. He submitted that the Union has led evidence in relation to manufacture of Rotor magnets, victimisation an casual employees. According to him this evidence cannot be looked into because the allegation on the above three counts has been made by the Union after the employer's evidence was closed and also there were no pleadings to this effect in the written statement filed by the Union. He relied upon the decision of the Supreme Court in the case of Management of Hindustan Steel Ltd., v/s Workmen reported in 1973 LIC 461 in support of his contention that the evidence which is not supported by specific pleadings should not be looked into. Adv. Nadkarni therefore submitted that there was sufficient evidence produced by the employer to justify its proposal for retrenching 49 workmen out of the total workforce of 117.

Shri Subhas Naik, appearing for the Union, on the other hand submitted that the employer in its statement of claim at paras. 13 to 22 has given the reasons as to why the order dated 22-1-93 passed by the Minister for Labour should be quashed and set aside. He submitted that the pleadings made by the employer in paras. 13 to 32 of its statement of claim would have been material if the proceedings before this Tribunal were in the nature of an appeal. He submitted that since no appeal

is provided against the order of the Minister for Labour, and the present proceeding is a reference made by the Government, this Tribunal has to decide the dispute afresh on the merits of the case and hence the pleadings made by the employer in paras. 13 to 32 of the statement of claim cannot be considered. He further submitted that the employer is required to make an application under Sec.25 N of the I.D.Act, 1947 in Form P-A which is not one the employer has provided details as required to be furnished in Form P-A, and hence this Tribunal cannot decide the reference. Shri Subhas Naik further submitted that the Union in their written statement had denied that the employer employed 117 workmen, and hence the burden was on the employer to prove that it employed 117 workmen. He also submitted that no sufficient evidence was produced by the employer to justify its proposal to retrench 49 workmen. Shri Subhas Naik contended that the employer had admitted that it has employed 7 new workmen in its factory, and the stand taken by the employer is that the said persons have been taken in management cadre. He submitted that even if it is presumed that they were taken in management cadre even then their employment is not justified because the employer's case is that the production has fallen. In support of his contentions that the proposal of the employer for retrenchment is not justified Shri Subhas Naik relied upon the decision of the Supreme Court in the case of workmen of M/s Mukund Iron & Steel Works Ltd., V/s Mukund Iron & Steel Works Ltd., reported in 1982 LAB IC 1171 and workmen of Meenakshi Mills Ltd., V/s Meenakshi Mills Ltd., reported in 1992 SCC(L&S) 679 and that of the Bombay High Court in the case of Association of Engineering Workers V/s Indian Hume Pipe Company Ltd., reported in FJR Vol.68, 44. On the specified authority to review its own order or refer the matter to the Tribunal for adjudication. When the reference is made by the Government, under Sec.25N(6) the Tribunal is not called upon to decide upon the legality of the order passed by the Government or the authority granting or refusing permission. This is obvious because of the wordings used in Sec.25N(6) of the said Act. The words used are "or refer the matter for adjudication (emphasis is mine). Therefore, what is referred for adjudication is the matter and not the issue of legality of the order passed. This aspect came to be considered by the Division Bench of the Bombay High Court in the case of Association of Engineering Workers v/s Indian Hume Pipe Co. Ltd., reported in FJR Vol. 68 page 44. In the said case the High Court held as follows:

> ... The words, "refer the matter" and "adjudication" are important. What is sought to be referred is the matter and not the question of legality of the order. In the context the expression "refer the matter" will mean refer the application for permission made by the employer for adjudication. The Tribunal is expected to pass an Award. The term "award" is defined by Sec.2(b) to mean an interim or final determination of any industrial dispute or of any question relating thereto....."

Therefore since according to the above decision of the Bombay High Court what is referred is the application for permission made by the employer, for adjudication, it follows that the Tribunal has to consider the application made by the employer afresh an give its Award. I, therefore agree with the submission of Shri Subhas Naik for the Union that when reference is made under Sec. 25N(6) of the Act, the dispute is to be decided afresh. This is infact also the contention of the employer. However, I do not agree with the contention of Shri Subhas Naik for the Union that the employer ought to have filed a fresh application for permission under Sec.25N in Form P-A before this Tribunal and that for not doing so, this Tribunal cannot decide the reference. Sec.25N (1)(b) of the Act states that no retrenchment can be made by the employer to whom chapter V-B of the Act applies, until prior permission of an appropriate Government or the prescribed authority has been obtained on an application made on that behalf and Sec.25N(2) states that such an application is to be made in a prescribed manner which is Form P-A. This mean that the application in Form P-A is to be made to the Government or the prescribed authority and not to the Tribunal. The Tribunal comes into picture only when the reference is made by the Government for deciding the matter. There cannot be a second application in Form P-A to be made to the Tribunal. This is also clear from the decision of the Bombay High Court in the case of Association of Engineering Workers (supra) wherein the Bombay High Court has held that "refer the matter" means refer the application for permission made by the employer for adjudication. This shows that a second application or an application in Form P-A afresh to the Tribunal is not contemplated when the reference is made by the Government under Sec. 25 N(6) of the Act. Therefore, there is no substance in the contention of Shri Subhas Naik for the Union that this Tribunal cannot decide the reference for want of fresh application in Form P-A by the employer and hence this contention of the union is rejected.

Now, Section 25 N (2) of the Industrial Disputes Act, 1947 states that the application for permission to retrench is to be made in the prescribed manner stating clearly the reasons for the intended retrenchment. The prescribed manner is the Form P-A which contains the various particulars to be furnished by the employer. The employer had made the application to the Government in Form P-A and also various details as required were furnished. The employer had sought permission to retrench 49 workmen out of the total 117 workmen. The copy of the said application was served on the Union, who filed its objections to the application. From the records it appears that the Union never disputed that the employer did not employe 117 workmen. The reason for retrenchment that is given by the employer is that there is substantial reduction in the demand for the jewels manufactured by the employer on account of the shift in the international market from mechanical to quartz watches. The contention of the employer is that due to the shift in the market from mechanical to quartz watches, the prouction of mechanical watches has been reduced considerably, which has resulted into reduction in the demand for jewels as jewels are basically required for mechanical watches. According to the employer, 17 jewels are used for hand wound mechanical watch and 21 jewels are used for automatic watch, inrespect of quartz watches maximum 4 jewels are used in a watch. The employer has further contended that the HMT Company who was the main purchaser of the jewels manufactured by the employer had decided to convert its unit at Tumkur into 100% quartz making unit and hence had informed the employer that it would not need jewels for mechanical watches from April 1993. Also the other watch making Companies like Hyderabad Allwyn Company, Indo Swiss Times Ltd., and Jayna watches had reduced their purchase of jewels from the employer

considerably during the year 1992-93. The employer has also contended that the cost of inputes during the past year have gone up by 5 to 6 times whereas the selling price of the jewels remained stagnant due to the excess of supply over demand. The other contention of the employer is that due to the decline in demand, the stock of jewels has gone up from 0.17 million jewels in March 1990 to 2.9 million in March 1992, as also the profit which has come down from 62.17 lakhs in 1989 to 29.25 lakhs in 1992. According to the employer therefore there is sufficient reason for granting permission to retrench the workmen as claimed by the employer. Adv. Shri Nadkarni has referred to decision of the Supreme Court and that of the Kerala High Court in support of his contention that it is within the descretion of the employer to organise his business in the manner he thinks best and to decide the strenght of his labour force for reason of economy and convenience, except that such discretion should not be actuated by malafide or it should not be by way of victimisation or unfair labour practice. The decisions of the Supreme Court that he has relied upon are in the case of Parry & Company Ltd., (supra); Workmen of Meenakshi Mills & Other (supra); and the decision of the Kerala High Court in the case of Muslim Printing A. P. Company Ltd., (supra). I have gone through the said decisions of the Supreme Court and the Kerala High Court. No doubt the Supreme Court in the case of Parry & Company Ltd. (supra) did hold that it is the right of the employer to reorganise his business and so long as it is done bonafide, it is not competent of a Tribunal to question its propriety. The Supreme Court further held that the action of the employer must not be actuated by any motive of victimisation or unfair labour practice, and it is for the employer to decide the strength of his labour force, and if the number of workmen exceeds the reasonable and legitimate needs of undertaking, it is open to the employer to retrench the surplus labour. However, the Supreme Court in the case of Workmen of Meenakshi Mills Ltd., (supra) in paragraph 32 of its judgement held that the principles laid down by the Supreme Court for retrenchment in the case of Parry & Co. Ltd., (supra) were laid down at a time when retrenchment, as defined in Sec. 2 (00) of the Act, was confined to mean discharge of surplus labour or staff. The Supreme Court held that there has been a change in law relating to retrenchment since its decision in State Bank of India v/s N. Sundara Money, reported in (1976) I SCC 822 wherein "retrenchment", as defined in Sec. (00) was construed to mean termination howsoever produced and all terminations except those specified in clauses (a), (b) and (c) of Sec. 2 (00) were held to be retrenchment. The Supreme Court further held that the law laid down by it in Dr. Macropollo & Co.'s case; Workmen of Subong Tea Estate case and Parry & Co. case on the basis of the said restricted meaning of retrenchment cannot be held to govern the exercie of the power by the appropriate Government or the authority under Sub. Sec. 2 of Section 25N. It therefore follows that the principles of retrenchment laid down by the Supreme Court in Parry & Co. Ltd. case (supra) do not apply to the case falling under Sec. 25 N of the Act. The factors to be considered at the time of granting or refusing permission to retrench are laid down under Sec. 25 N (3) of the Industrial Disputes Act. They are namely (i) genuineness an aequacy of the reasons stated by the employer (ii) interest of the workmen an (iii) all other relevant factors. The Supreme Court in the case of workmen of Meenakshi Mills Ltd (supra) while interpreting the expression "in the interests of workmen" has held that the said expression covers the interests of all the workers employed in the establishment, including not only the workers who are proposed to be retrenched but also the workers who are to be retaine. The Supreme Court further held that it would be in the interest of the workers as a whole that the industrial establishment in which they are employed continues to run in good health because sickness leading to closure of the establishment would result in unemployment for all of them. Therefore, while granting permission or refusing it under Sec. 25 N of the Industrial Disputes Act. 1947, the above three factors are to be considered. According to me, the phrase "all other relevant factors" referred to in Sec. 25 N(3) of the I. D. Act, relates to malafides, victimisation, unfair labour practices etc. Therefore the application filed by the employer is to be decided by taking into consideration the above factors.

I have already stated earlier that the reasons given by the employer for retrenching 49 workmen are that there is a switch over in the international market as well as in Indian market from manufacturing of mechanical watches to quartz watches as a result of which there is considerable fall in the demand for watch jewels, and consequently there is increase in the stock of jewels an decrease in the profits. In support of its contentions the employer has examined its Managing Director Shri M. L. Ahuja. He has filed his affidavitory evidence and he has been cross examined. Mr. Ahuja has produced various documents to show that there is fall in the demand for watch jewels and also as regards the increase in the stock of jewels and decrease in the profits. The Union has not thrown any challenge to the documents produced by the employer. Mr. Ahuja, the witness of the employer or the other witnesses have not been cross examined on the said documents. The cross examination of Mr. Ahuja the main witness of the employer, is not on the point and it does not help the Union in any way. The cross examination on the main issues involved is mostly in the form of suggestions or denying the statements made by the said witness. The main issue for consideration is whether there is really a fall in the demand for watch jewels resulting into the increase in the stock of jewels, and consequently rendering workforce surplus, which is the reason given by the employer to retrench the workmen. I have gone through the various documents produced by the employer and I am of the opinion that the employer has succeded in proving that there is considerable fall in demand for watch jewels manufactured by the employer. The contentions of the employer that mechanical hand wound watches require 17 jewels and automatic watches require 21 jewels and that quartz watches require hardly 2 to 4 jewels is not disputed by the Union. No counter evidence has been brought in by the Union. The employer has produced a letter dated 18.12.92 from the Bifora watch Company Ltd., Exb. 23 wherein the company has informed the employer about its inability to pay the bills of the employer on account of sharp decline in the demand for mechanical watches. The company further informed that on account of the accumulated stocks of the finished products there would be effect on future purchases of watch jewels from the employer. There is another letter dated 6th March, 1993 Exb. 22 from the HMT Company wherein it is stated that the Company had planned to discontinue further production of mechanical watches at Tumkur from April 1993 onwards and that the company was converting its plants for manufacturing quartz

watches. The employer has produced a letter dated 5th June, 1992 wherein the Indo Swiss Time Ltd., has informed the employer that though March, April and May are the peak season for the sale of watches, there was no sale for that year due to the crisis in the mechanical watch industry. The company therefore requested the employer to continue with the same price level until situation improved. Then there are telex messages received from the HMT Company by the employer Exb. 24, 25 and 26, whereby the company has informed the employer to hold back the supply of jewels, because of the existing stock. The employer has produced the letter dated 20.6.92 Exb. 29 cancelling the order for supply of jewels because the employer cannot supply the jewels at the rate mentioned by the said Company. The employer has also produced the statements at Exb. A and B colly-statement at Exb. A shows that in 1989-90 net sale of jewels to Hyderabad Allwyn Ltd., was 74,24,000. In 1990-91 16,88,000 and in 1991-92 it was 13,97,000. This shows that there is considerable decline in the sale of jewels to the said company from the year 1989-90 to 1991-92. Statement at Exb. B colly shows that stock of the finished goods has gone up from 32,95,216 as on 31.3.89 to 71.60,413 as on 20.3.93 Statement produced by employer at annexure 'C' shows that the cost of major inputs such as Ruby has gone up by 140.72%, that of Diamond powder by 120.1% and that of import raw materials by 92.8% in the year 1992-93. The statement at annexure D colly shows that the average annual increase in minimum wage paid to an unskilled worker is 39% excluding bonus paid and the increase in six years is 235% excluding bonus. The employer has produced the copy of the application made by the United Diamond Limited to the Labour Commissioner of Himachal Pradesh for permission to retrench 60 workmen and the order passed by the Labour Commissioner, granting permission, Annexure F colly. From the application made by the said Company it can be seen that the permission to retrench 60 workers out of 113 workmen was sought because there was no demand for supply of jewels from from HMT Company and there was also no hope of getting order in the near future. United Diamond Limited is the Company who is engaged in the business of manufacturing jewels. The Labour Commissioner of Himachal Pradesh by order dated 7.2.93 granted permission to retrench 60 workers. The employer has also produced letters written by EDC and State Industries Promotion Corporation of Tamil Nadu Ltd., demanding payment of outstanding dues from the employer. From the above document produced by the employer it can be seen that the said documents support the case of the employer that there is a shift in the interenational market as well as in the Indian market from manufacturing of mechanical watches to quartz watches and there is a sharp decline in the demand for supply of watch jewels manufactured by the employer. From the order of the Labour Commissioner, Himachal Pradesh, it can be seen that for the same reasons as that of the employer, permission was granted to the jewel manufacturers United Diamond Ltd., to retrench 60 workers out of 113 workers.

The Union has examined some of the workmen in defence. However, the evidence of some of them supports the case of the employer that there is reduction in the demand for the watch jewels manufactured by the employer. Shri Janardan Naik, who is working in the cutting section has stated that in 1987 there were three shifts and that now there are only two shifts. This shows that because of the reduction in demand for jewels, one shift had to be discontinued. Shri Mahananda Harmalkar, has stated that the production of the rotor magnets was started in December, 1991. In cross examination he has stated that in the year 1991 8.33 % bonus was paid to the workers and prior to that 20% bonus was paid. This shows that the profit of the employer has come down from the year 1990-91 due to the lack of demand for jewels. Another important evidence is that of Shri Dilip Naik. He is an Operator working in the polishing department. In his cross he has admitted that earlier there were three shifts and now there are only two shifts. He has further admitted that the third shift was discontinued because there is no sufficient work. This statement of the said witness supports the case of the employer that there is no demand for jewels. The other witness Suganda Poll has stated that in 1992-93 there were 105 workers and as on today there are 73 workers. She has further stated that 4 workers were dismissed from service and the remaining had left, and that the vacancy created by the workers who have left was not filled up by the employer. This clearly shows that since there is no work the employer did not feel the need to fill up the vacancy. Shri Mahesh Parab is another witness examined by the Union who is an Operator working in crusomat department, which makes cups in the jewels. He has stated that there are 11 machines in the said department, out of which 8 machines have been kept idle, for the last about 2 years. According to him the said machines are kept idle because there are no workers. This shows that the employer had to keep the machines idle because there is no work. Another witness Shri Deepak Charya who is working as an Operator has admitted in his cross that the jewels are manufactured as per the orders placed with the company. From the above evidence which is brought on record by the Union, it can be very well said that the same lends support to the contention of the employer that due to the fall in demand for the jewels manufactured by the employer, there is no sufficient work in the factory and because of that one shift had to be discontinued as also the machines had to be kept idle. Also some of the workers have left because of lack of work. The Union has tried to bring in evidence that the machines in the factory can be used for manufacturing rotor magnets. The employer has also admitted that attempt was made to manufacture rotor magnets. However, according to the employer this venture was not feasible and the company had to go into loss. The employer has produced annual reports for the year 1992. From the said reports it can be seen that the cost of the raw materials required for manufacturing rotor magnets is itself more than the sale of the said magnets. The Union has not led any evidence to the contrary. The employer has produced the Annual reports. From the annual report for the year 1992 it can be seen that the value of the rotor magnets sold was Rs. 25,478/- where as the cost of the raw materials required for manufacturing rotor magnets itself was Rs. 2.80 lakhs. From the above report it is evident that the effort of the employer to manufacture rotor magnets was not successful and on the other hand the employer was suffering losses. Therefore the contention of the Union that the employer can utilise the machines for manufacturing rotor magnets does not hold good. From the Annual reports for the years 1990 to 1992 produced by the employer it can be seen that the profit of the employer has come down drastically. For the financial year ending 31st March, 1990, the profit was Rs. 51.61 lakhs, for the financial year ending 31st March, 1991 the profit was reduced to Rs. 34.53 lakhs and for the financial

year ending on 31st March 1992, the profit was further reduced to Rs. 29.16 lakhs. It cannot be said that merely because the employer has been making profit he cannot reorganise his business by retrenching some workers who according to him are surplus vis-a-vis the running of his business. The Madras High Court in the case of India Tyre and Rubber Co., v/s Their Workmen reported in 1957 (2) LLJ 506 while negativating the contention of the workers that the management proceeded from a desire to make more profits held that desire to make more profits is natural and lawful, and such a desire in a Company does not vitiate retrenchment. The employer has ought permission to retrench 49 workmen out of the total strength of 117. In view of what is discussed above, I hold that the employer has succeeded in proving that there are valid and compelling reasons for carrying out retrenchment in its establishment and hence I answer the issue No. 1 in the affirmative.

The employer has sought permission to retrench 49 out of the total strength of 117. The employer has produced the report of the National Productivity Council at annexure "L". the study was conducted as agreed between the Union and the Employer as per the terms of settlement Exb. 38 colly. As per the said report, the National Productivity Council has determined the workforce at 110 for achieving the production target of 40 million jewels per annum. The Union has not disputed the report. As per the annual report for the year 1992, the production of watch jewels for the financial year ending 31st March, 1992 is 19.4 million. Therefore, if the National Productivity Council has determined the workforce at 110 to produce 40 million jewels, it would mean that 50% of the workforce determined by the said Council i.e 55 workers would be sufficient to produce 20 million jewels. In the amended written statement filed by the Union, the Union had alleged malafides and victimisation against the employer. However, no evidence was led by the Union to prove the said allegations. Hence, the Union has not succeeded in proving malafides and victimisation on the part of the employer. In the circumstances, the request of the employer to permit retrenchment of 49 workers out of the total 117 workers, is bonafide, reasonable and justifiable. This is also in the interest of the workers, because, otherwise a situation may arise whereby the employer may be compelled to discontinue its business if it becomes uneconomical, which would affect the workers of the employer at large. Now, it has been admitted by the employer in para. 7 of its reply Exb. 57 to the application of the Union dated 23-8-94 that as on 1-8-94 the number of workpersons is 72. This means admitedly from the date the application was filed by the Employer under sectiion 25 N of the Industrial Disputes Act, 1947, 45 workers are no more in service of the employer. By seeking permission to retrench 49 workers out of 117 workers, who are surplus, the employer wanted to bring down the workforce to 68 workpersons. However, as I have said as admitted by the employer the workforce has been already reduced to 72. Taking this admitted fact into account since I have held that the request of the employer to permit retrenchment of 49 workers out of 117 works is reasonable and justified, it is just and proper to grant permission to retrench 4 workers so as to bring down the total workforce to 68, as intended by the employer. I therefore, permit the retrenchment of 4 workers and answer the issue nos. 3 and 4 accordingly.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the proposal of M/s Indo Swiss Jewels Limited, Karaswada, Mapusa, Goa, seeking permission to retrench workmen from its factory at Tivim Industrial Estate is legal and justified. The Employer M/s Indo Swiss Jewels Limited, is permitted to retrench 4 workers.

There shall be no order as to costs.

Inform the Government accordingly about the passing of the award.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

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